

Napa County Agreement No. 170795B

Flood Control Agreement No. 190013B
(FC)

FIRST AMENDMENT

TO

**COOPERATIVE JOINT POWERS AGREEMENT
TO FUND AND ADMINISTER THE NAPA COUNTYWIDE STORMWATER
MANAGEMENT PROGRAM (NAPA COUNTYWIDE
STORMWATER POLLUTION PREVENTION PROGRAM)**

**THIS AMENDMENT NO. 1 TO COOPERATIVE JOINT POWERS
AGREEMENT** (this "Amendment") is made and entered into as of this 14th day of June
2018, by and between the Napa County Flood Control and Water Conservation District, a special
district of the State of California, ("DISTRICT"), the City of American Canyon, the City of
Napa, the City of St. Helena, the City of Calistoga (collectively, "CITIES"), and the Town of
Yountville ("TOWN"), and Napa County, a political subdivision of the State of California
("COUNTY"). DISTRICT, CITIES, TOWN, and COUNTY are also referred to herein
collectively as "Parties."

RECITALS

WHEREAS, CITIES, TOWN and COUNTY are permittees under the Waste Discharge
Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems
adopted by the State Water Resources Control Board on February 5, 2013 as Order No. 2013-
0001-DWQ and National Pollutant Discharge Elimination System General Permit No.
CAS000004, as amended ("General MS4 Permit"); and

WHEREAS, on or about March 8, 2016, DISTRICT, CITIES, TOWN, and COUNTY
entered into Cooperative Joint Powers Agreement for the funding and administration of the Napa
Countywide Stormwater Pollution Prevention Program (NCSPPP) (the "Agreement") [also
known as Napa County Flood Control And Water Conservation District Agreement No. 463
(FC), Napa County Agreement No. 8437, City of Napa Agreement No. C2015 244, City of St.
Helena Agreement No. 2015-106, City of Calistoga Agreement No. 641, and City of American
Canyon Agreement No. 2015-170] pursuant to which the DISTRICT administers the NCSPPP to
facilitate CITIES, TOWN and COUNTY's compliance with the General MS4 Permit, and
CITIES, TOWN and COUNTY reimburse the DISTRICT for their respective share of the
DISTRICT's costs; and

WHEREAS, the General MS4 Permit is effective through June 30, 2018, and may be
administratively extended by the State Water Resources Control Board; and

WHEREAS, the Parties anticipate that the State Water Resources Control Board will
administratively extend the General MS4 Permit until June 30, 2021; however, the State Water
Resources Control Board has not yet taken the necessary actions to extend the General MS4
Permit; and

WHEREAS, the Parties now wish to amend the Agreement to extend the term to June 30, 2021 to cover the time period in which the State Water Resources Control Board is anticipated to administratively extend and re-issue the General MS4 Permit.

TERMS

NOW THEREFORE, the Parties hereby amend the Agreement as follows:

1. Paragraph 1 of the Agreement is amended to read in full, as follows:
 1. **Term of the Agreement.** The term of this Agreement shall have commenced on March 8, 2016, and shall terminate on June 30, 2021. The term of this Agreement shall remain in full force and effect unless any of the Parties gives the other Parties written notice of intention to terminate in accordance with the provisions set forth in Paragraph 7(a) or 7(b).
2. Except as provided in section 1, above, all other terms and conditions of the Agreement shall remain in full force and effect.
3. This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Amendment.


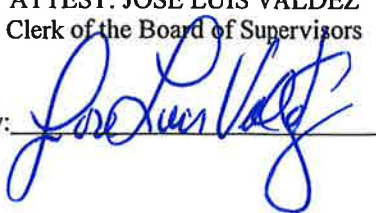
IN WITNESS WHEREOF, the Parties have executed this Amendment of the Agreement as of the date first above written.

NAPA COUNTY, a political subdivision of
the State of California

By


BRAD WAGENKNECHT, Chair of the
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas S. Capriola</u> Deputy County Counsel</p> <p>Date: <u>April 26, 2018</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: <u>6/19/2018</u></p> <p>Processed By:  Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: </p>
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CITY OF NAPA

By: Jill Techel
JILL TECHEL, Mayor
"CITY"

ATTEST: DOROTHY ROBERTS
City Clerk

By: Dorothy Roberts

COUNTERSIGNED:

For DESIREE BRUN, City Auditor - SASHA PAYASUAN, Deputy City Auditor

By: Sasha Payasuan

APPROVED AS TO FORM:

MICHAEL BARRETT, City Attorney

By: Michael Barrett

CITY OF ST. HELENA

By: Peter White
PETER WHITE, Vice Mayor for
ALAN GALBRAITH, Mayor
"CITY"

ATTEST: CINDY TZAFPOPOULOS
City Clerk

By: Cindy Tzafopoulos

APPROVED AS TO FORM:
THOMAS B. BROWN,
City Attorney

By: Thomas B. Brown



CITY OF CALISTOGA

By: _____

CHRIS CANNING, Mayor

"CITY"

ATTEST: KATHY FLAMSON,
City Clerk

By: _____

APPROVED AS TO FORM:
MICHELLE KENYON,
City Attorney

By: _____

CITY OF AMERICAN CANYON

By: Leon Garcia
LEON GARCIA, Mayor
"CITY"


ATTEST: SUELLEN JOHNSTON
City Clerk

By: Suellen Johnston

APPROVED AS TO FORM:
WILLIAM D. ROSS,
City Attorney

By: William D. Ross

TOWN OF YOUNTVILLE

By: 
STEVEN R. ROGERS, Town Manager
"TOWN"

APPROVED AS TO FORM:
GARY B. BELL, Town Attorney

By: 

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a
special district of the State of California

By: Jill Techel
JILL TECHEL
Chairperson of the Board of Directors

“DISTRICT”

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley (e-sign)</u> District Counsel</p> <p>Date: <u>April 27, 2018</u></p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: <u>6/19/2018</u></p> <p>Processed By: <u>[Signature]</u> Deputy Secretary of the District Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Secretary of the District Board</p> <p>By: <u>[Signature]</u></p>
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**AMENDMENT NO. 3
DESIGN PROFESSIONAL SERVICES AGREEMENT
Final Design, Construction Management and
Inspection Services
Related to the
Feige Water Tank Replacement Project**

Authorizing Agreement No. 663-03
Amending Agreement No. 663

This AMENDMENT NO. 3 to the Agreement between the City of Calistoga and Kennedy/Jenks Consultants (hereinafter Amendment No. 3) is hereby entered into as of the 19 day of December, 2018, by and between the City of Calistoga, a municipal corporation (hereinafter referred to as "City") and Kennedy/Jenks Consultants (hereinafter referred to as "Design Professional").

RECITALS

WHEREAS, City and Design Professional have previously entered into a Design Professional Services Agreement for design professional services in connection with the Feige Water Tank Replacement Project (herein referred to as "Agreement"), said agreement being dated February 2, 2016, Amendment No. 1 dated July 18, 2017 and Amendment No. 2 dated April 12, 2018; and

WHEREAS, additional construction management and inspection services are required to complete the project.

NOW, THEREFORE, the parties do hereby mutually agree to amend the Agreement as follows:

1. Continuation of Term. The Agreement term shall remain as stated in Amendment No. 2 (February 2, 2016 to September 11, 2019).

2. Amendments. All terms and conditions of the Agreement, as amended, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 1 shall be amended by adding the following:

1. Scope of Services. Design Professional shall perform the Phase 2 – Construction Management/Inspection (OES Cost Estimate Item E) services set out in the "Scope of Work" in the attached Proposal dated December 18, 2018.

B. Paragraph 2 shall be amended and replaced in its entirety by the following:

2. Time of Performance. The services of Design Professional are to be completed not later than September 11, 2019.

C. Paragraph 3.A shall be amended and replaced in its entirety by the following:

3. Compensation.

A. Compensation. The compensation to be paid to Design Professional, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A" to Amendment No. 3. However, in no event shall the amount City pays Design Professional exceed original Agreement amount of Fifty Seven Thousand One Hundred Thirty-nine Dollars (\$57,139), plus Amendment No. 1 amount of One Hundred Sixty Three Thousand Three Hundred Forty Dollars (\$163,340), plus Amendment No. 2 amount of \$32,000, plus Amendment No. 3 amount of \$10,400 for a total not to exceed amount of Two Hundred Sixty Two Thousand Eight Hundred Seventy-nine Dollars (\$262,879). Payment by City under this agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

3. Conflicts. In the event of a conflict between the terms and provisions of this Amendment No. 3 to Agreement and the terms and provisions of the original Agreement, the terms of this Amendment No. 3 shall govern and control.

IN WITNESS WHEREOF, the City and Design Professional have executed this Amendment No. 3 as of the date first above written.

CITY OF CALISTOGA

By: _____

Dylan Eek

Title: City Manager

KENNEDY/JENKS CONSULTANTS

By: _____

Kerwin C. Allen

Title: Vice-President

ATTEST:

Kathy Flanigan

Kathy Flanigan
City Clerk

EXHIBIT "A"

**SCOPE OF WORK
And
COST PROPOSAL**

Kennedy/Jenks Consultants
Engineers & Scientists

303 Second Street, Suite 300 South
San Francisco, California 94107
415-243-2150
FAX: 415-896-0999

18 December 2018

Derek Rayner, P.E.
Deputy Director
Public Works Department
City of Calistoga
414 Washington Street
Calistoga, CA 94515

Subject: Construction Management/Inspection – Closeout Services
Proposal for Third Amendment – Agreement No. 663
Feige Canyon Water Tank Replacement
K/J 1672002.00

Dear Derek:

Kennedy/Jenks is pleased to submit this proposal for a Third Amendment to Agreement No. 663 for providing professional services for site observation and office engineering services related to construction management/inspection and closeout for the Feige Canyon Water Tank Replacement project. This project is being funded jointly between the City and the Cal OES Hazard Mitigation Grants Program Unit and FEMA.

Understanding and Background

The "Scope of Work" attached to the original Agreement dated 2 February 2016 as Exhibit "A." included Phase 1 – Design (OES Cost Estimate – Item A), which included preparation of 35% construction documents, Phase 2 – Construction Management/Inspection (OES Cost Estimate – Item E), included the preparation of 100% construction documents along with limited construction services.

Scope of Services

All terms and conditions of the Agreement, as amended, remain in full force and effect; except that the following amended Scope of Services is proposed in order to address the project goals and objectives.

Paragraph 1 shall be amended by adding the following:

Derek Rayner, P.E.
City of Calistoga
18 December 2018
Page 2

Design Professional shall perform the following additional Phase 2 – Construction Management/Inspection (OES Cost Estimate Item E) services:

Phase 2 – Construction Management/Inspection (OES Cost Estimate – Item E)

Task 2.6: Site Observations (Closeout)

This task will be amended to include review of the proposed alternative MIOX disinfection facilities submittal, final inspection and observation of constructed facilities, engineering support in processing an estimated 3 to 4 remaining contractor RFIs, and office engineering services associated with response to questions over the remaining 4 to 5 weeks of construction duration.

A written inspection report will be provided for the final site visit documenting observations and will include annotated photos, as appropriate.

Assumptions

The following assumptions were developed when preparing this revised Scope of Work for the project.

1. Sitework remaining in contract is limited to retaining wall, base, paving, fencing, and protective coatings and is weather dependent, but will be completed by April 2019. The compensation is based on the contractor's estimate of approximately 4 to 5 weeks of remaining field work after the week of December 17.
2. Engineering assistance for review of construction related change orders.
3. No remaining shop drawing submittals.

Tasks Performed by City

The following tasks will be performed by the City:

1. The City will assist with engineering effort associated with as-built/record documents, and the 1-year anniversary inspection of the tank.
2. The City will assist with construction related correspondence directly with the Contractor.

Time of Performance and Continuation of Term

It is understood that FEMA approved the City's request for a time extension request to 11 September 2019 with an understanding that project construction will be completed by 2 April 2019 (approximately 365 calendar days from the specified Notice to Proceed). Kennedy/Jenks proposes to complete the scope of work described above by 2 April 2019. It is understood that

Derek Rayner, P.E.
City of Calistoga
18 December 2018
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federal funds may be de-obligated for work that is not completed by the completion date, and for which no time extension is approved.

Compensation

As of Kennedy/Jenks most recent Invoice No. 126291, dated 11/30/2018, for professional services rendered through 11/23/2018, Total Billings total \$250,844.26, resulting in \$1,634.74 in remaining budget.

The compensation to be paid to Design Professional, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "B" to Amendment. However, in no event shall the amount City pays Design Professional exceed original Agreement plus First Amendment amount of Two Hundred Twenty Thousand Four Hundred Seventy-nine Dollars (\$220,479), plus Second Amendment amount of Thirty-Two Thousand Dollars (\$32,000), plus Third Amendment amount of Ten Thousand Four Hundred (\$10,400) for a total not to exceed amount of Two Hundred Sixty-Two Thousand Eight Hundred Seventy-nine Dollars (\$262,879). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

Terms and Conditions

This proposal is based on current projections of staff availability and costs and, therefore, is valid for 90 days following the date of this letter. Except for the terms and provisions outlined in this proposal for the second amendment to the Agreement, the terms and provisions of the original Agreement shall govern and control.

If this proposal meets with your approval, please sign where noted at the end of the document and return a copy to our office to serve as our authorization.

Derek Rayner, P.E.
City of Calistoga
18 December 2018
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If you have any questions regarding our proposal, please contact Don Barraza at (415) 243-2483 or Kerwin Allen at (415) 243-2457.

Very truly yours,

KENNEDY/JENKS CONSULTANTS, INC.



Kerwin C. Allen, P.E.
Vice President



Donald L. Barraza, P.E.
Principal Engineer
Structural Department Head

AUTHORIZATION:

CITY OF CALISTOGA

By: _____

(Signature)

(Print Name)

Title: _____

Date: _____

Enclosure

cc: Kerwin C. Allen, Vice President, Kennedy/Jenks Consultants, San Francisco

**FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT**

between

CITY OF CALISTOGA AND DYLAN FEIK

1. PARTIES AND EFFECTIVE DATE.

The parties to this First Amendment to Employment Agreement ("First Amendment") are the City of Calistoga ("CITY") and Dylan Feik ("MANAGER"). The effective date of this agreement shall be June 19, 2018.

2. PURPOSE.

The parties have previously entered into an Employment Agreement between City of Calistoga and Dylan Feik ("Employment Agreement") effective as of February 2, 2016. The CITY and MANAGER hereby desire to amend the Employment Agreement as set forth below.

3. AMENDMENT.

A. Section 6(a) is hereby modified to read in its entirety as follows:

6. COMPENSATION AND BENEFITS.

a. Salary. CITY agrees to pay MANAGER for his services rendered pursuant hereto as City Manager the sum of one hundred eighty-nine thousand three hundred and seventy-one dollars (\$189,371) annually payable in installments at the same time as other employees of the CITY are paid. CITY also agrees that should it provide a cost of living adjustment to all existing department heads, the MANAGER shall receive the same adjustment.

B. Section 6(e) is hereby deleted in its entirety and replaced with the following:

6. COMPENSATION AND BENEFITS.

e. ICMA-RC 401(a) Money Market Plan. The City authorizes MANAGER to participate in a deferred compensation plan known as ICMA-RC 401(a) Money Market Plan and City agrees to pay annually the employer administrative fee in the amount of \$1,000 for MANAGER to participate in the ICMA-RC 401(a) money market plan ("plan"). MANAGER shall participate in the plan according to the terms and conditions of the applicable plan documents. All additional contributions to the plan shall be paid solely by MANAGER.

C. Section 7(e) is hereby added to read in its entirety as follows:

7. RESIGNATION AND TERMINATION.

e. Pursuant to Government Code section 53243, et seq., if MANAGER is convicted of a crime involving an abuse of his office or position, all of the following shall apply upon final conviction: (1) if MANAGER is provided with administrative leave pay pending an investigation, MANAGER shall be required to fully reimburse such amounts paid; (2) if the City, in its discretion, pays for the criminal legal defense of MANAGER, MANAGER shall be required to fully reimburse such amounts paid; and (3) if MANAGER is provided with any severance pay and/or settlement pay, MANAGER shall be required to reimburse such pay. For purposes of this Section,

“abuse of office or position” shall be as defined under California Government Code section 53243.4.

D. Section 9 is hereby amended to read in its entirety as follows:

9. PERFORMANCE EVALUATION.

CITY shall evaluate MANAGER's performance annually and prior to any renewal or extension of this Agreement. As part of each evaluation, the City Council and MANGER will set goals and objectives for MANAGER's performance for the following year. CITY and MANAGER may renew or extend the term of this Agreement, provided such renewal or extension is reduced in writing, signed by both Parties and adopted as an Amendment to this Agreement.

D. Section 11 is hereby amended to read in its entirety as follows:

11. INDEMNIFICATION.

Except as otherwise provided in Section 7(e) of this Agreement, CITY shall defend, save harmless, and indemnify MANAGER against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of MANAGER's duties as City Manager. CITY will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to MANAGER as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following MANAGER's employment with CITY as City Manager.

4. Except as specifically modified herein, all remaining terms and obligations set forth in the Employment Agreement between the CITY and MANAGER shall remain in full force and effect.

CITY OF CALISTOGA

By: _____

Chris Canning
Mayor

Dated: _____

6/21/18

MANAGER:

By: _____

Dylan Feik

Dated: _____

6/20/18

APPROVED AS TO FORM:

Michelle Marchetta Kenyon
City Attorney

4. Except as specifically modified herein, all remaining terms and obligations set forth in the Employment Agreement between the CITY and MANAGER shall remain in full force and effect.

CITY OF CALISTOGA

By: _____

Chris Canning
Mayor

Dated: _____

6/21/18

MANAGER:

By: _____

Dylan Feik

Dated: _____

6/20/18

APPROVED AS TO FORM:

Michelle Marchetta Kenyon
City Attorney

**AMENDMENT NO. 1
TO THE CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF CALISTOGA AND
JOHN DRAPER, P.E.**

**Related to Professional Consulting Services Agreement
For Various Capital Improvement Projects
(Authorizing Agreement No. 724
Amending Agreement No. 724-01)**

THIS AMENDMENT NO. 1 to the Consultant Services Agreement between the City of Calistoga and John Draper, P.E., to perform specific tasks including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement (hereinafter Amendment No. 1) is hereby entered into as of the 15th day of May, 2018, by and between the City of Calistoga, a municipal corporation (hereinafter referred to as "City") and John Draper, P.E., (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, City and Consultant have previously entered into a Consultant Services Agreement to perform specific tasks including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement, said Agreement being dated June 21, 2017 (hereinafter referred to as "Agreement"); and

WHEREAS, City and Consultant now desire to enter into this Amendment No. 1 to provide additional services related to various capital improvement projects.

NOW, THEREFORE, the parties do hereby mutually agree to amend the Agreement as follows:

1. Under Paragraph 1, Scope of Services, Subsection A is added as follows:

A. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the additional services based on individual Purchase Orders or Task Orders approved by the Public Works Director.

2. Under Paragraph 3, Compensation and Method of Payment, Subsection A and C are revised as follows:

A. Compensation. The compensation to be paid to Consultant shall be at the fees included in the Agreement (\$50,000) and also and additional \$50,000

(Addendum No. 1) for specific tasks authorized by the Public Works Director including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement. However, in no event shall the total amount exceed One Hundred Thousand Dollars (\$100,000), with such amount including both the original Agreement amount and the additional fees associated with this Amendment No. 1. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of One Hundred Thousand Dollars (\$100,000).


3. Except as specifically modified by Amendment No. 1, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Consultant have executed this Amendment No. 1 as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik
Title: City Manager

CONSULTANT

By: 
John Draper, P.E.

ATTEST:


Kathy Flannison
City Clerk

**AMENDMENT NO. 2
TO THE CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF CALISTOGA AND
JOHN DRAPER, P.E.**

**Related to Professional Consulting Services Agreement
For Various Capital Improvement Projects
(Authorizing Agreement No. 724
Amending Agreement No. 724-02)**

THIS AMENDMENT NO. 2 to the Consultant Services Agreement between the City of Calistoga and John Draper, P.E., to perform specific tasks including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, inspection and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement (hereinafter Amendment No. 2) is hereby entered into as of the 21st day of November, 2018, by and between the City of Calistoga, a municipal corporation (hereinafter referred to as "City") and John Draper, P.E., (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, City and Consultant have previously entered into a Consultant Services Agreement to perform specific tasks including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement, said Agreement being dated June 21, 2017 (hereinafter referred to as "Agreement") and Amendment No. 1 dated May 15, 2018; and

WHEREAS, City and Consultant now desire to enter into this Amendment No. 2 to provide additional services related to various capital improvement projects.

NOW, THEREFORE, the parties do hereby mutually agree to amend the Agreement as follows:

1. Under Paragraph 3, Compensation and Method of Payment, Subsection A and C are revised as follows:

A. Compensation. The compensation to be paid to Consultant shall be at the fees included in the Agreement and Amendment No. 1 (\$100,000) and also an additional \$135,330 (Addendum No. 2) for specific tasks authorized by the Public Works Director including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, inspection and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement. However, in no event shall the total

amount exceed Two Hundred Thirty Five Thousand Three Hundred Thirty Dollars (\$235,330), with such amount including the original Agreement amount, the additional fees associated with Amendment No. 1 and this Amendment No. 2. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of Two Hundred Thirty Five Thousand Three Hundred Thirty Dollars (\$235,330).

3. Except as specifically modified by Amendment No. 2, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Consultant have executed this Amendment No. 2 as of the date first above written.

CITY OF CALISTOGA

CONSULTANT

By: _____

By: _____

Dylan Feik

John Draper, P.E.

Title: _____
City Manager

ATTEST:

Kathy Flamson
City Clerk

John Draper, P.E.

PO Box 2324 | Santa Rosa, CA 95404 | 707-738-1012 | 3Acorns@att.net



Michael Kirn
Public Works Director
City of Calistoga
414 Washington Street
Calistoga, CA 94515

November 1, 2018

Subject: Proposed Scope of Services for Project Management – Amendment #2

Dear Mr. Kirn,

It has been a pleasure assisting the City with the execution of capital improvement projects in accordance with Consultant Services Agreement #724 and Amendment #1. Starting in July of 2017, I provided assistance on the following projects:

- 2017 Microsurfacing Project
- Lake Street Pavement Rehabilitation Project – Grant to Fair Way
- Lake Street Pavement Rehabilitation Project – Washington to Fair Way
- Spring Street Utility Replacement & Pavement Rehabilitation Project
- Feige Water Tank
- Lincoln/Brannan X-Walk
- Hazard Mitigation Grant Program applications
- Cedar Street Utilities and Pavement Project RFP
- Grant Street Pavement and Path Project RFP
- Annual Sidewalk Maintenance Project

I look forward to continuing working with you and the City of Calistoga with the successful delivery of quality capital improvement projects. In order to continue providing services, it is respectfully requested that Agreement #724 be amended to add additional compensation. Based on your direction, I propose to provide services related to the following projects.

- Lake Street Pavement Rehabilitation Project – Washington to Fair Way
- Feige Water Tank
- Spring Street Utility Replacement & Pavement Rehabilitation Project
- Lincoln/Brannan X-Walk
- Washington Street Utility Replacement & Pavement Rehabilitation Project
- Grant Street Pavement and Path Project
- Cedar Street Utilities and Pavement Project
- Hazard Mitigation Grant Program - Projects to be identified as funding is approved.

The attached proposal summarizes the work that I propose to provide beyond the \$100,000 budget authorized by Amendment #1 to Agreement #724. The proposal includes the scopes of work, schedules and budgets for ongoing projects and future projects. Please contact me if you have any questions.

Sincerely,

Budget Summary for Amedment #2 to Agreement #724

Work Beyond the \$100,000 Compensation Authorized by Amendment #1
Estimated Budgets for Ongoing and Future Projects

Lake Street #2 Washington to Fair Way	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Construction Engineering Support	20	\$2,600
Task 2- Construction Inspection	75	\$9,750
SUBTOTAL	95	\$12,350

Feige Canyon Water Storage Tank Replacement Project	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Construction Inspection and Support	112	\$14,560
SUBTOTAL	112	\$14,560

Spring St - Cedar to end	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	0	\$0
Task 2- Prepare Specifications	14	\$1,820
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	30	\$3,900
Task 5- Construction Inspection	70	\$9,100
SUBTOTAL	129	\$16,770

Lincoln/Brannan Crosswalk Project	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Identify Scope of Project	0	\$0
Task 2- Request for Design Proposals	0	\$0
Task 3- Manage Design Contract	20	\$2,600
Task 4- Bid Support Services	10	\$1,300
Task 5- Contract Award Support	10	\$1,300
Task 6- Construction Management	30	\$3,900
Task 7- Construction Inspection	60	\$7,800
SUBTOTAL	130	\$16,900

Washington Street - North Oak to Berry	Estimated Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	15	\$1,950
Task 2- Prepare Specifications	15	\$1,950
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	20	\$2,600
Task 5- Construction Inspection	140	\$18,200
SUBTOTAL	205	\$26,650

Grant Street - Garnett Creek to City Limits	Estimated Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	15	\$1,950
Task 2- Prepare Specifications	35	\$4,550
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	20	\$2,600
Task 5- Construction Inspection	120	\$15,600
SUBTOTAL	205	\$26,650

Cedar Street - Lincoln St to Spring St	Estimated Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	15	\$1,950
Task 2- Prepare Specifications	35	\$4,550
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	30	\$3,900
Task 5- Construction Inspection	70	\$9,100
SUBTOTAL	165	\$21,450

HMGP Water Reliability	Estimated Fees	
Task	Hours	Fees at \$130/hr
To be determined		
SUBTOTAL		

**AMENDMENT NO. 2
TO THE CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF CALISTOGA AND
JOHN DRAPER, P.E.**

**Related to Professional Consulting Services Agreement
For Various Capital Improvement Projects
(Authorizing Agreement No. 724
Amending Agreement No. 724-02)**

THIS AMENDMENT NO. 2 to the Consultant Services Agreement between the City of Calistoga and John Draper, P.E., to perform specific tasks including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, inspection and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement (hereinafter Amendment No. 2) is hereby entered into as of the 21st day of November, 2018, by and between the City of Calistoga, a municipal corporation (hereinafter referred to as "City") and John Draper, P.E., (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, City and Consultant have previously entered into a Consultant Services Agreement to perform specific tasks including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement, said Agreement being dated June 21, 2017 (hereinafter referred to as "Agreement") and Amendment No. 1 dated May 15, 2018; and

WHEREAS, City and Consultant now desire to enter into this Amendment No. 2 to provide additional services related to various capital improvement projects.

NOW, THEREFORE, the parties do hereby mutually agree to amend the Agreement as follows:

1. Under Paragraph 3, Compensation and Method of Payment, Subsection A and C are revised as follows:

A. Compensation. The compensation to be paid to Consultant shall be at the fees included in the Agreement and Amendment No. 1 (\$100,000) and also an additional \$135,330 (Addendum No. 2) for specific tasks authorized by the Public Works Director including but not limited to obtaining proposals from engineering design firms, preparing bid documents, contract and construction management, inspection and project bidding associated with individual capital improvement projects such as pavement maintenance and utility replacement. However, in no event shall the total

amount exceed Two Hundred Thirty Five Thousand Three Hundred Thirty Dollars (\$235,330), with such amount including the original Agreement amount, the additional fees associated with Amendment No. 1 and this Amendment No. 2. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of Two Hundred Thirty Five Thousand Three Hundred Thirty Dollars (\$235,330).

3. Except as specifically modified by Amendment No. 2, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Consultant have executed this Amendment No. 2 as of the date first above written.

CITY OF CALISTOGA

By:  _____

Dylan Feik

Title: City Manager

CONSULTANT

By:  _____

John Draper, P.E.

ATTEST:



Kathy Flamson
City Clerk

John Draper, P.E.

PO Box 2324 | Santa Rosa, CA 95404 | 707-738-1012 | 3Acorns@att.net



Michael Kirn
Public Works Director
City of Calistoga
414 Washington Street
Calistoga, CA 94515

November 1, 2018

Subject: Proposed Scope of Services for Project Management – Amendment #2

Dear Mr. Kirn,

It has been a pleasure assisting the City with the execution of capital improvement projects in accordance with Consultant Services Agreement #724 and Amendment #1. Starting in July of 2017, I provided assistance on the following projects:

- 2017 Microsurfacing Project
- Lake Street Pavement Rehabilitation Project – Grant to Fair Way
- Lake Street Pavement Rehabilitation Project – Washington to Fair Way
- Spring Street Utility Replacement & Pavement Rehabilitation Project
- Feige Water Tank
- Lincoln/Brannan X-Walk
- Hazard Mitigation Grant Program applications
- Cedar Street Utilities and Pavement Project RFP
- Grant Street Pavement and Path Project RFP
- Annual Sidewalk Maintenance Project

I look forward to continuing working with you and the City of Calistoga with the successful delivery of quality capital improvement projects. In order to continue providing services, it is respectfully requested that Agreement #724 be amended to add additional compensation. Based on your direction, I propose to provide services related to the following projects.

- Lake Street Pavement Rehabilitation Project – Washington to Fair Way
- Feige Water Tank
- Spring Street Utility Replacement & Pavement Rehabilitation Project
- Lincoln/Brannan X-Walk
- Washington Street Utility Replacement & Pavement Rehabilitation Project
- Grant Street Pavement and Path Project
- Cedar Street Utilities and Pavement Project
- Hazard Mitigation Grant Program - Projects to be identified as funding is approved.

The attached proposal summarizes the work that I propose to provide beyond the \$100,000 budget authorized by Amendment #1 to Agreement #724. The proposal includes the scopes of work, schedules and budgets for ongoing projects and future projects. Please contact me if you have any questions.

Sincerely,

Budget Summary for Amedment #2 to Agreement #724

Work Beyond the \$100,000 Compensation Authorized by Amendment #1
Estimated Budgets for Ongoing and Future Projects

Lake Street #2 Washington to Fair Way	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Construction Engineering Support	20	\$2,600
Task 2- Construction Inspection	75	\$9,750
SUBTOTAL	95	\$12,350

Feige Canyon Water Storage Tank Replacement Project	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Construction Inspection and Support	112	\$14,560
SUBTOTAL	112	\$14,560

Spring St - Cedar to end	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	0	\$0
Task 2- Prepare Specifications	14	\$1,820
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	30	\$3,900
Task 5- Construction Inspection	70	\$9,100
SUBTOTAL	129	\$16,770

Lincoln/Brannan Crosswalk Project	Estimated Remaining Fees	
Task	Hours	Fees at \$130/hr
Task 1- Identify Scope of Project	0	\$0
Task 2- Request for Design Proposals	0	\$0
Task 3- Manage Design Contract	20	\$2,600
Task 4- Bid Support Services	10	\$1,300
Task 5- Contract Award Support	10	\$1,300
Task 6- Construction Management	30	\$3,900
Task 7- Construction Inspection	60	\$7,800
SUBTOTAL	130	\$16,900

Washington Street - North Oak to Berry	Estimated Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	15	\$1,950
Task 2- Prepare Specifications	15	\$1,950
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	20	\$2,600
Task 5- Construction Inspection	140	\$18,200
SUBTOTAL	205	\$26,650

Grant Street - Garnett Creek to City Limits	Estimated Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	15	\$1,950
Task 2- Prepare Specifications	35	\$4,550
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	20	\$2,600
Task 5- Construction Inspection	120	\$15,600
SUBTOTAL	205	\$26,650

Cedar Street - Lincoln St to Spring St	Estimated Fees	
Task	Hours	Fees at \$130/hr
Task 1- Manage Design Contract	15	\$1,950
Task 2- Prepare Specifications	35	\$4,550
Task 3- Bid Support Services	15	\$1,950
Task 4- Construction Management	30	\$3,900
Task 5- Construction Inspection	70	\$9,100
SUBTOTAL	165	\$21,450

HMGP Water Reliability	Estimated Fees	
Task	Hours	Fees at \$130/hr
To be determined		
SUBTOTAL		

PROFESSIONAL SERVICES AGREEMENT
Juvenile Diversion Program
Calistoga Authorizing Agreement No. 731
St. Helena Authorizing Agreement No. XXX

THIS PROFESSIONAL SERVICES AGREEMENT entered on this 1st day of August 2017, by and between the CITY OF CALISTOGA herein called CALISTOGA and the CITY OF ST. HELENA herein called ST. HELENA with the UPVALLEY FAMILY CENTERS of St. Helena and Calistoga herein called UPVALLEY FAMILY CENTERS.

Recitals

WHEREAS, CALISTOGA and ST. HELENA desires to employ/enter into an agreement with the UPVALLEY FAMILY CENTERS to furnish professional services in the coordination and management of a Juvenile Diversion Program and Drug/Alcohol Prevention Education Program services; and

WHEREAS, the UPVALLEY FAMILY CENTERS hereby warrants that they have the necessary expertise, experience, and qualifications to perform the services and duties described in the attached Scope of Work, Program, and Services; and

WHEREAS, CALISTOGA and ST. HELENA desire to retain the UPVALLEY FAMILY CENTERS pursuant to this Agreement to provide services described in Section 1 of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Agreement

SECTION 1 – Scope of Services

Subject to such police direction and approval as CALISTOGA and ST. HELENA through its staff may determine from time to time, the UPVALLEY FAMILY CENTERS shall perform the services set out in the “Scope of Work” attached hereto as Exhibit “A” and incorporated herein by reference.

SECTION 2 – Additional Services

The UPVALLEY FAMILY CENTERS shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or Exhibit A, “Scope of Work” unless such additional services and compensation are authorized in advance and in writing by the City Council or City Managers of CALISTOGA or ST. HELENA.

SECTION 3 – Time of Performance

The term of this agreement shall be for a period of June XX, 2017 through June 30, 2020. Any changes to these dates must be approved in writing by the City Managers of CALISTOGA or ST. HELENA or their designees.

SECTION 4 – Compensation and Method of Payment

- A. Compensation: Subject to any limitations set forth in this Agreement, CALISTOGA and ST. HELENA agrees to pay the UPVALLEY FAMILY CENTERS \$25,000.00 each, per fiscal year, for the Juvenile Diversion Program and Drug/Alcohol Prevention Education Program services. Total annual compensation shall not exceed \$50,000.00 unless additional compensation is approved in accordance with Section 2. This does not include equipment or specific training costs authorized by CALISTOGA or ST. HELENA or outlined in the "Scope of Work".
- B. Timing of Payment: Billing for services may be made on a bi-annual basis. CALISTOGA and ST. HELENA shall review the UPVALLEY FAMILY CENTERS' invoice(s) for all work performed and expenses incurred during the invoice period and pay within 30 days of receipt of the invoice.
- C. Changes in Compensation: The UPVALLEY FAMILY CENTERS will not undertake any work that will incur costs in excess of agreed amount of compensation.
- D. Written Consent for Changes in Compensation: In case of changes affecting project scope resulting from new findings, unanticipated conditions, unanticipated regulatory changes, or other conflicts or discrepancies, the UPVALLEY FAMILY CENTERS shall promptly notify CALISTOGA and ST. HELENA of the identified changes and advise CALISTOGA and ST. HELENA of the recommended solution. UPVALLEY FAMILY CENTERS shall not receive compensation for work performed on such changes without prior written authorization from CALISTOGA or ST. HELENA.
- E. Litigation Support: The UPVALLEY FAMILY CENTERS agrees to testify at CALISTOGA'S or ST. HELENA's request if litigation is brought against CALISTOGA or ST. HELENA in connection with the UPVALLEY FAMILY CENTERS' written report. Unless the action is brought by the UPVALLEY FAMILY CENTERS or is based upon the UPVALLEY FAMILY CENTERS' negligence, CALISTOGA and ST. HELENA will compensate the UPVALLEY FAMILY CENTERS for the preparation and the testimony at the UPVALLEY FAMILY CENTERS' standard hourly rates.

SECTION 5 – Ownership of Documents

CALISTOGA and ST. HELENA agree that all UPVALLEY FAMILY CENTERS materials may be or are protected proprietary documents and cannot be used by CALISTOGA or ST. HELENA during or after the expiration of this contract for the CALISTOGA's or ST. HELENA's use in implementing children's or teen programs of any kind by itself or any other agent without the expressed written permission of the UPVALLEY FAMILY CENTERS. CALISTOGA or ST. HELENA may retain ownership of all written reports compiled for CALISTOGA or ST. HELENA by the UPVALLEY FAMILY CENTERS during the length of this Agreement and may use them at their own discretion.

SECTION 6 – Employment of Other Consultants, Specialists, or Experts

The UPVALLEY FAMILY CENTERS may employ or otherwise incur obligations to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of CALISTOGA or ST. HELENA. If said employment incurs an expense for which the UPVALLEY FAMILY CENTERS want CALISTOGA or ST. HELENA to pay, the UPVALLEY FAMILY CENTERS must first obtain prior written consent of CALISTOGA and ST. HELENA.

SECTION 7 – Interest of Consultant

- A. UPVALLEY FAMILY CENTERS (including principals, associates, and professional employees) covenants and represents that it does not know have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of the UPVALLEY FAMILY CENTERS' services hereunder. The UPVALLEY FAMILY CENTERS further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

The UPVALLEY FAMILY CENTERS is not a designated employee within the meaning of the Political Reform Act because the UPVALLEY FAMILY CENTERS:

- (1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of CALISTOGA, ST. HELENA, or any City Official, other than normal contract monitoring; and
- (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700 (a)(2))

SECTION 8 – Interest of Members and Employees of CALISTOGA or ST. HELENA

No member of CALISTOGA or ST. HELENA and no other officer, employee or agent of CALISTOGA or ST. HELENA who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal financial interests or the financial interest of any corporation, partnership or association in which he/she is directly or indirectly interested. Notwithstanding this provision, members and employees of CALISTOGA or ST. HELENA may enroll their children in the programs offered by the UPVALLEY FAMILY CENTERS.

SECTION 9 – Liability of Members and Employees of CALISTOGA or ST. HELENA

No member of CALISTOGA or ST. HELENA and no other officer, employee or agent of CALISTOGA or ST. HELENA shall be personally liable to UPVALLEY FAMILY CENTERS or otherwise in the event of any default or breach of the City, or for any amount which may become due to the UPVALLEY FAMILY CENTERS or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

SECTION 10 – Mutual Indemnification

CALISTOGA, ST. HELENA and the UPVALLEY FAMILY CENTER hereby agrees to mutually defend, indemnify and save harmless each other's officers, employees, agents, and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of either party undertaken pursuant to this Agreement, when a party has no direct or indirect duty to injured party otherwise. CALISTOGA and ST. HELENA has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. CALISTOGA, ST. HELENA, and the UPVALLEY FAMILY CENTERS' duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

SECTION 11 – UPVALLEY FAMILY CENTERS not an Agent of CALISTOGA or ST. HELENA

CALISTOGA and ST. HELENA retain all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. UPVALLEY FAMILY CENTERS, its officers, employees, and agents shall not have any power to bind or commit CALISTOGA or ST. HELENA to any decision.

SECTION 12 – Independent Contractor

It is understood that the UPVALLEY FAMILY CENTERS, in the performance of the work and services agreed to be performed by UPVALLEY FAMILY CENTERS; and as an independent contractor, UPVALLEY FAMILY CENTERS shall obtain no rights to retirement benefits or other benefits which accrue to

CALISTOGA and ST. HELENA employees, and the UPVALLEY FAMILY CENTERS hereby expressly waives any claim it may have to any such rights.

SECTION 13 – Compliance with Laws

- A. General: UPVALLEY FAMILY CENTERS shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances and regulations. UPVALLEY FAMILY CENTERS represents and warrants to CALISTOGA and ST. HELENA that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for the UPVALLEY FAMILY CENTERS to practice its profession. UPVALLEY FAMILY CENTERS represents and warrants to CALISTOGA and ST. HELENA that the UPVALLEY FAMILY CENTERS shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for the UPVALLEY FAMILY CENTERS to practice its profession.
- B. Special Rules for Employees Working with Children: UPVALLEY FAMILY CENTERS agree that it will assure that each employee or volunteer hired for a position having supervisory or disciplinary authority over any minor must 1) complete an application that inquires as to whether or not that individual has been convicted of any offenses as specified in the California Penal Code, 2) submit to a screening for that person's criminal background, and 3) provide a set of fingerprints, which may be taken by CALISTOGA or ST. HELENA. UPVALLEY FAMILY CENTERS further agrees to comply with all applicable laws and regulations regarding working with children, including but not limited to the provisions of the California Public Resources Code, Section 5164 and the California Penal Code section 11105.3 discussed herein. Failure to comply with any of these provisions with any of these provisions will be deemed a material breach of this Agreement.
- C. Workers Compensations: UPVALLEY FAMILY CENTERS certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and the UPVALLEY FAMILY CENTERS certifies that it will comply with such provisions before commencing performance of this Agreement.
- D. Injury and Illness Prevention Program: UPVALLEY FAMILY CENTERS certifies that it is aware of and has complied with the provisions of the California Labor Code Section 6401.7, with requires every employer to adopt a written injury and illness prevention program.
- E. CALISTOGA and ST. HELENA not responsible: CALISTOGA and ST. HELENA are not responsible or liable for UPVALLEY FAMILY CENTERS' failure to comply with an and all of said requirements.

SECTION 14 – Confidential Information

- A. All data, documents, discussions or other information developed or received by or for the UPVALLEY FAMILY CENTERS in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by CALISTOGA or ST. HELENA or as required by law.
- B. The UPVALLEY FAMILY CENTERS, its officers, employees, agents or subcontractors, shall not without prior written authorization from the City Manager(s) or unless requested by City Attorney of CALISTOGA or ST. HELENA, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives CALISTOGA or ST. HELENA notice of such court order or subpoena.
- C. If the UPVALLEY FAMILY CENTERS, or any officer, employee, agent or subcontractor of the UPVALLEY FAMILY CENTERS provides any information or work product in violation of this Agreement, then CALISTOGA and/or ST. HELENA shall have the right to reimbursement and indemnity from the UPVALLEY FAMILY CENTERS for an damages, costs and fees, including attorney’s fees, caused by or incurred as a result of the UPVALLEY FAMILY CENTERS’ Conduct.

SECTION 15 – Insurance

A. Minimum Scope of Insurance

- (1) UPVALLEY FAMILY CENTERS agrees to have and maintain, for the duration of the contract, a General Liability Insurance police insuring him/her and his/her firm to an amount not less than One Million (\$1,000,000.00) combined single limit per occurrence and is the aggregate for bodily injury, personal injury and property damage.
- (2) UPVALLEY FAMILY CENTERS agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.
- (3) UPVALLEY FAMILY CENTERS shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from the UPVALLEY FAMILY CENTERS’ operations under this Agreement, whether such operations be by the UPVALLEY FAMILY CENTERS or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than Two Million Dollars (\$2,000,000.00) on a claims-made annual aggregate basis.

(4) A Worker's Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of the UPVALLEY FAMILY CENTERS.

a. This policy shall provide coverage for Workers' Compensation (Coverage A).

b. This policy shall also provide coverage for One Hundred Thousand (\$100,000.00) Employer's Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Worker's Compensation and Employers' Liability policies, as stipulated below:

a. "The City of Calistoga and City of St. Helena, their employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of named insured."

b. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Cities may possess, including any self-insured retention the Cities may have, and any other insurance the Cities does possess shall be considered excess insurance only and shall not contribute with it."

c. "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) UPVALLEY FAMILY CENTERS shall provide to CALISTOGA and ST. HELENA all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the Cities on or before commencement of performance of this Agreement. CALISTOGA and ST. HELENA reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CALISTOGA or ST. HELENA, their officers, officials, employees or volunteers.

(2) UPVALLEY FAMILY CENTERS' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages: Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt

requested, has been given to CALISTOGA and ST. HELENA. Current certification of such insurance shall be kept on file with the Cities' Secretaries at all times during the term of this Agreement.

- D. Acceptability of insurers: Insurance is to be placed with insurers with a A.M. Best rating of no less than A:VII.
- E. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by CALISTOGA and ST. HELENA. At the Cities' option, the UPVALLEY FAMILY CENTERS shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

SECTION 16 – Assignment Prohibited

Neither CALISTOGA, ST. HELENA or the UPVALLEY FAMILY CENTERS may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

SECTION 17 – Termination of Agreement

- A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by either of the three parties upon written notice to each of the three parties of this agreement upon 30 days written notice.
- B. If the UPVALLEY FAMILY CENTERS fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, CALISTOGA or ST. HELENA may terminate this Agreement upon written notice.
- C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the CALISTOGA and ST. HELENA, become its sole property, at the UPVALLEY FAMILY CENTERS expense, be delivered to the respective Cities or to any party they may so designate.
- D. In the event termination is without cause, the UPVALLEY FAMILY CENTERS shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that the UPVALLEY FAMILY CENTERS shall be entitled to compensations for work in progress at the time of termination.

SECTION 18 – Amendment

This Agreement constitutes the complete and exclusive statement of the Agreement to CALISTOGA, ST. HELENA, and the UPVALLEY FAMILY CENTERS. It may be amended or extended from time to time by written agreement of the parties hereto.

SECTION 19 – Litigation Costs

If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

SECTION 20 – Time of the Essence

Time is of the essence of this Agreement, however, the UPVALLEY FAMILY CENTERS shall not be held responsible for delays caused by acts outside of the UPVALLEY FAMILY CENTERS control.

SECTION 21 – Written Notification

Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other parties at the address set forth here in below. Either party may change its address by notifying the other parties of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to CALISTOGA:

City of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to ST. HELENA:

City of St. Helena
City Manager
1481 Main Street
St. Helena, CA 94574

If to UPVALLEY FAMILY CENTERS:

UpValley Family Centers
Executive Director
1440 Spring Street
St. Helena, CA 94574

SECTION 22 – UPVALLEY FAMILY CENTERS' Books and Records

- A. UPVALLEY FAMILY CENTERS shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CALISTOGA or ST. HELENA for a minimum of three (3) years, or for a longer period required by law, from the date of final payment to the UPVALLEY FAMILY CENTERS to this Agreement.
- B. UPVALLEY FAMILY CENTERS shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CALISTOGA or ST. HELENA's City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CALISTOGA and ST. HELENA for inspection at their respective City Halls when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the UPVALLEY FAMILY CENTERS address indicated for receipt of notice of Agreement.
- D. Where CALISTOGA or ST. HELENA has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of the UPVALLEY FAMILY CENTERS' business, the Cities may, by written request by any of the above named officers, require that custody of the records be given to CALISTOGA or ST. HELENA and that such records and documents be maintain at their respective City Halls. Access to such records and documents shall be granted to any party authorized by the UPVALLEY FAMILY CENTERS, their representatives, or UPVALLEY FAMILY CENTERS' successor in-interest.

SECTION 23 – Equal Employment Opportunity

The UPVALLEY FAMILY CENTERS is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. UPVALLEY FAMILY CENTERS will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. UPVALLEY FAMILY CENTERS will take affirmative action to ensure that applications are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin, or any other class protected by law. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The UPVALLEY FAMILY CENTERS further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

SECTION 24 – Waiver

No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that parties may have hereunder.

SECTION 25- Captions

Captions to sections of this Agreement are for convenience purposes only, and are not part of this Agreement.

SECTION 26 – Execution

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by all parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

SECTION 27 – Right of Entry

CALISTOGA and ST. HELENA reserves the right to enter its property at the site where the UPVALLEY FAMILY CENTERS is providing services in performance of this agreement at all times by its agents, employees and representatives.

SECTION 28 – Venue

In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS THEREOF, CALISTOGA, ST. HELENA, and the UPVALLEY FAMILY CENTERS have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

Dylan Feik
City Manager

CITY OF ST. HELENA

Mark Prestwich

City Manager

UPVALLEY FAMILY CENTERS

Jenny Ocon

Executive Director

ATTEST:

Kathy Flanigan

Kathy Flanigan
Calistoga City Clerk

ATTEST:

Kamille Garcia

Cindy Black
St. Helena City Clerk

Kamille Garcia, Deputy City Clerk for

PROFESSIONAL SERVICES AGREEMENT

Made this 21st day of July in the year 2017

BETWEEN: **City of Calistoga**
1232 Washington Street
Calistoga, CA 94515

AND: **Thomas Stimpert, Architect**
3947 Wallace Road
Santa Rosa, California 95404

PROJECT DESCRIPTION:

The project consists of:

- an accurate estimate of costs for full ADA compliance of the Calistoga Community Center bathrooms and meeting room, fire safety compliance of the meeting room and minimal exterior improvements to include repairing and painting the exterior of the building . The architect will work with Paul Coates Construction to determine the projected costs.
- a schematic design plan for a new Sharpsteen Plaza based on a narrative provided by City representatives

THE CLIENT AND ARCHITECT AGREE TO THE TERMS AND CONDITIONS OF THIS CONTRACT AS OF THE DATE SERVICES WERE FIRST PROVIDED.

Article 1. **Extent of Agreement**

- 1.1 The Professional Services Agreement represents the entire and integrated agreement between the Client and the Architect and supersedes any and all memorandums, negotiations, representations and/or agreements, either written or oral. This Professional Services Agreement may be amended only by written instrument signed by both the Clients and the Architect.

Article 2. **The Architect's Services (Scope of Work)**

- 2.1 The Architect will provide the following services:
- Cost estimating for minimal improvements to the Calistoga Community Center
 - Schematic design plan for a new Sharpsteen Plaza

**Article 3.
Client's Responsibilities**

- 3.1 The Client shall review all documents submitted by the Architect and shall render decisions and approvals to allow the work to proceed in an orderly manner.
- 3.2 The Client agrees to provide the Architect with full information regarding the site (including lot boundaries and zoning restrictions) as well as requirements for the project .

**Article 4.
Compensation of the Architect**

- 4.1 The Client shall compensate the Architect for professional services on a "time and materials" basis for the above described scope of work with a maximum fee not to exceed \$6250 or 50 hours of the architect's time. Compensation for professional services shall be computed on the basis of 1/4 hour increments at the following rates:

<u>Employee Type</u>	<u>Hourly Rate</u>
Principal	\$125.00/ hr.
Clerical	\$ 55.00/ hr.

**Article 5.
Reimbursable Expenses**

- 5.1 Expenses of the Architect incurred on behalf of the project shall be reimbursed at direct cost when accompanied by statement identifying each expense item. Reimbursable expenses are as follows:
- blueprinting , copying, scans
 - CAD reproducibles
 - postage
- 5.2 The following services and and associated costs shall not be included in the Architect's fee:
- Fees for professional services by others, including but not limited to: structural, civil and geotechnical engineers, specialty lighting design, surveying and landscape design
 - Any other goods or services needed for the proper performance of this project.

Article 6.
Payments to the Architect

- 6.1 Payment to the Architect shall be made once a month subsequent to the receipt of the invoice for the period billed. Payments shall be due and payable within 15 days of receipt of invoice. Payments for services not made within thirty days shall be considered past due and subject to a late charge of 1.5 percent per month.
- 6.2 If payment for Architect's services is not received within 60 days of the initial billing date, the Architect has the right to consider the Client in breach of this agreement. Upon notification of this breach the Client shall immediately pay all fees and charges owed to the Architect. Failure to do so within seven days will result in full suspension of all services.

Article 7.
Architect's Accounting Records

- 7.1 The Architect's books and records pertaining to the project shall be kept according to recognized accounting standards and shall be available to the Client or authorized representatives at mutually convenient times.
- 7.2 In the event of termination prior to completion of the services performed, the Client will pay said fees prorated accordingly to the progress of the work.

Article 8.
Other Provisions

- 8.1 The original drawings, calculations and specifications prepared for this project may not be used on other or extensions to this project except by written agreement and with appropriate compensation to the Architect.
- 8.2 It is understood that we make no warranty, either expressed or implied, as to the findings, designs, recommendations, specifications, or professional advice except that they are prepared in accordance with current generally accepted professional architectural practices.
- 8.3 The Client agrees to the fullest extent permitted by law to hold harmless and indemnify the Architect, the Architect's partners, servants, agents, and employees (collectively the "indemnities"), and to defend the indemnities using counsel satisfactory to the Architect from and against all claims, liabilities, losses, damages, judgements, awards, and costs arising from or connected with Project and/or the performance of the work described herein, but only if such claim, damage, loss, or expense is caused in whole or in part, by passive or active negligence by Client, or Client's employees, agents, contractors, subcontractors, or any other party directly or indirectly employed or retained by them, regardless of whether or not it is caused in part by the passive or active negligence of a party indemnified hereunder. However, this provision shall not apply to

the liability of any indemnitee arising out of said indemnitee's sole negligence or willful misconduct.

- 8.4 In recognition of the relative risks, regards and benefits of the project to both the Client and the Architect, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Architect's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed the Architect's fee.
- 8.5 Additionally, the client agrees to hold the Architect harmless from any and all liability resulting from the following:
- The estimate of costs made by the Architect or by others or by actual costs of the work.
 - The action or inaction of any government office, permit processing, zoning matters, etc.
- 8.6 The Client and Thomas Stimpert, Architect agree that all disputes between us arising out of or related to this agreement shall be submitted to non-binding mediation unless we mutually agree otherwise, and we further agree to include a similar mediation provision in all subsequent agreements with independent contractors or consultants retained for this project.

Article 9. Governing Law

- 11.1 This Professional Services Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date below.

City of Calistoga (Client)

By _____

Date

7/27/17

Thomas Stimpert (Architect)

By _____

Date _____

Thomas Stimpert

License #C18187

**PROFESSIONAL SERVICES AGREEMENT
UpValley Family Centers
for Community Health, Education and Outreach Services**

Authorizing Agreement No. 733

THIS AGREEMENT is entered into as of this 15th day of August 2017, by and between the CITY OF CALISTOGA herein called the "City", and UPVALLEY FAMILY CENTERS, herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain family health and community outreach services; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than August 15, 2017 and, subject to City Council approval, be completed not later than June 30, 2018. Any changes to these dates must be approved in writing by the City Manager or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall in no event exceed Thirty Thousand Dollars (\$30,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on an equally quarterly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work for which the City is obligated to pay that will incur costs in excess of the amount of Thirty Thousand Dollars (\$30,000) during the term of this Agreement.

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

5. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

6. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or

otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

7. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

11. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

12. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

14. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 90 days' written notice. Consultant may terminate this Agreement upon 90 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

15. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

16. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but

17. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

If to City: City of Calistoga
Dylan Feik, City Manager
1232 Washington Street
Calistoga, CA 94515

19. Consultant's Books and Records.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do

so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

20. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

21. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

22. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

24. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

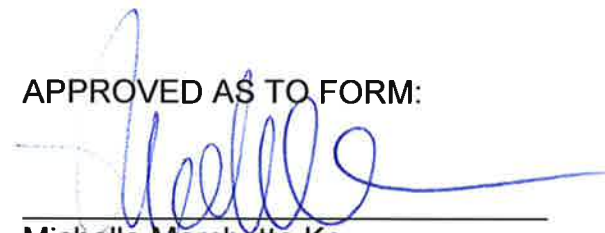
CITY OF CALISTOGA

By: 
Dylan Feik
Title: City Manager

CONSULTANT

By: 
Jenny Ocon
Executive Director

APPROVED AS TO FORM:


Michelle Marchetta Kenyon
City Attorney

ATTEST


Kathy Flamson, City Clerk

Exhibit A**Scope of Work
August 2017 – June 2018**

UpValley Family Centers is proud to partner with the City of Calistoga to provide much needed services for the residents of our town. Families served by UVFC are 80% monolingual Spanish speaking and 85% low-income earners.

For the 2017-2018 fiscal year, we propose the following scope of work:

▪ **Community Connections Program - \$10,000**

1. UVFC will provide broad education and outreach to families with children to inform them of all of the services provided locally by UVFC and its partner agencies, and the City of Calistoga. Specific populations for targeted outreach include single parent families, kin caregiver families, seniors and monolingual Spanish speakers. Outreach will include distribution of a monthly calendar through the schools, information on local television and radio stations, community presentations and personal phone calls.
2. The UVFC Community Liaison will provide guided referrals for 75 families each month recreation services, housing resources, medical and dental services, prenatal care, health insurance, community resources, legal assistance, preschool and childcare opportunities, and other family supports. The Community Liaison will meet with families individually to select the appropriate local service.
3. UVFC will provide translation and application assistance for 25 families each month for rental and employment issues, food and shelter programs. The Community Liaison will assist to complete applications and to translate and explain documents.

▪ **Senior Community Needs Program - \$20,000**

1. Provide at least 20 seniors each month with individual support, making referrals, scheduling appointments and completing applications to maintain their health and quality of life.
2. Coordinate services for seniors to be offered in Calistoga, including Bay Area Legal Aid, Mentis, HICAP, Department of Health and Human Services/Medicare, Area Agency on Aging, Napa County Adult Protective Services, and Collabria Care.

3. Offer special programs, at least once per quarter, that provide respite or information for seniors including support groups, educational workshops and resource fairs.

CONTRACT FOR CONSTRUCTION
(Agreement No. 735)

2017 MICROSURFACING PROJECT, PROJECT NO. 5402-C

THIS CONTRACT FOR CONSTRUCTION is made and entered into this 6th day of September, 2017 by and between the City of Calistoga, a municipal corporation, (hereinafter referred to as "City") and Telfer Pavement Technologies, LLC, 4522 Parker Ave., Suite 350, McClellan, California 95652, (hereinafter referred to as "Contractor").

The City and the Contractor agree as follows:

- (1) **CONTRACT SUM:** The City agrees to pay, and the Contractor agrees to accept, in full payment for the above work, the sum of Seven Hundred Ninety Seven Thousand Two Hundred Seventy Eight Dollars and Eighteen Cents (\$797,278.18) for the Base Bid, including Addendums 1 and 2 is to be paid in accordance with the Contract Documents.
- (2) **COMPLIANCE WITH LAW:** The City is a public agency. All provisions of law applicable to public contracts are a part of this contract to the same extent as though set forth herein and will be complied with by the Contractor.
- (3) **CONTRACT DOCUMENTS:** The following Contract Documents relating to this Contract for Construction are hereby made a part of and incorporated by reference into this Agreement: The Notice Inviting Bids, Information for Bidders, Contract Proposal, Faithful Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplemental Conditions, Special Provisions, Technical Specifications, State of California Department of Transportation Standard Plans and Specifications, 2015 edition, City of Santa Rosa Design and Construction Standards, most recent version, the Project Plans, duly issued addenda, duly Issued interpretations, approved change orders, preliminary construction schedule, Contractor's guarantee and bond, and supplemental agreements, certifications, and endorsements applicable to this work, with all modifications incorporated in said documents prior to receipt of the Contract Proposals. Any work called for in one contract document not mentioned in another is to be performed and executed the same as if mentioned in all Contract Documents.

This Agreement (including all documents referred to above and incorporated herein) represents the entire and integrated Agreement between City and Contractor for the Project and supersedes all prior negotiations, representations, or agreements, either written or oral.

This document may be amended only by written instrument, as provided in the General Conditions.

Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation.

A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

This Agreement is effective upon approval by the City Council, execution by the Contractor and concurrence by the Agency's designated representative.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

Dated: 9/19/17

ATTEST:


Kathy Flanson, City Clerk

Telfer Pavement Technologies, LLC

By: 
(Authorized Representative of Contractor)

Printed Name: Michael S. Telfer

Title: President and General Manager

(Attach Acknowledgment for Authorized Representative of Contractor)

Date: Sept. 15, 2017

(Contractor signatures must be notarized.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California

County of Contra Costa

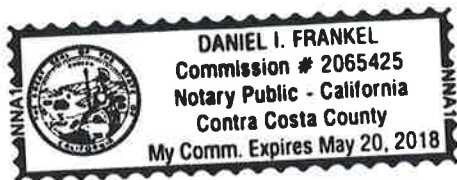
On Sept. 15, 2017
Date

before me,

Daniel I. Frankel, Notary Public
Name and Title of the Officer

personally appeared

Michael S. Teller
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature: _____

[Signature]
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner and Telfer Pavement Technologies, LLC, (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **2017 MICROSURFACING PROJECT, PROJECT NO. 5402-C** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond for the faithful performance of all terms and conditions of the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and Western Surety Company (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of Seven Hundred Ninety Seven Thousand Two Hundred Seventy Eight Dollars and Eighteen Cents (\$797,278.18), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Performance Bond.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If Contractor timely performs each and every obligation under the Construction Contract, Surety and Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. Surety's obligation under this Performance Bond shall arise after:

3.1 Owner has declared a Contractor Default and has notified Contractor and Surety at its address described in Paragraph 10 below that Owner has declared a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than seven days after receipt of such notice to discuss methods of performing the Construction Contract; and

3.2 Owner has agreed to pay the Balance of the Agreement Price, as calculated under the terms of the Construction Contract, to Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the Construction Contract with Owner.

4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by Owner and the contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Agreement Price, as calculated under the terms of the Construction Contract, incurred by Owner resulting from Contractor's Default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Contractor and with reasonable promptness under the circumstances:

4.4.1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment thereof to Owner; or

4.4.2. Deny liability in whole or in part and notify Owner citing specific reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 within twenty days from receipt of the notice described in paragraph 3.1 (whether or not a conference has been held pursuant to paragraph 3.1), or such longer period upon which Owner and Surety may agree in writing, Surety shall be deemed to be in default on this Bond. If the Surety proceeds as provided in Subparagraph 4.4, and Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has declared a Contractor Default, and if Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Construction Contract, and the responsibilities of Owner to Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Performance Bond, but subject to commitment by Owner of the Balance of the Agreement Price to mitigation of costs and damages on the Construction Contract, Surety is obligated without duplication for:

6.1 The responsibilities of Contractor for correction of defective work, materials and equipment and completion of the Construction Contract;

6.2 Additional legal, design professional, construction management and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of Contractor.

7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Construction Contract, and the Balance of the Agreement Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators or successors.

8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as an item of costs.

10. Notice to Surety, Owner or Contractor shall be mailed or delivered to the address, or sent via fax machine to the facsimile number, shown on the signature page.

11. DEFINITIONS

11.1 Balance of the Agreement Price: The total amount payable by Owner to Contractor under the Construction Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Construction Contract.

11.2 Construction Contract: The agreement between the Owner and the Contractor identified on the first page of this bond, including all Contract Documents and changes thereto.

11.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

CONTRACTOR, as Principal
Telfer Pavement Technologies, LLC

By: _____

Its: _____

Address: 4522 Parker Avenue

Building 700, Suite 350

McClellan, CA 95652

FAX: 916-383-4084

SURETY
Western Surety Company

By: _____

Its: _____

Address: Fisher Brown Bottrell Insurance, Inc.

P.O. Box 1490

Jackson, MS 39215-1490

FAX: 601-208-3022



Note:

Signatures of those executing for Surety must be properly acknowledged by Notary. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner") and Telfer Pavement Technologies, LLC (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **2017 MICROSURFACING PROJECT, PROJECT NO. 5402-C** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond to secure payment for all work, labor, materials, equipment or services furnished in connection with the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and Western Surety Company (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Claimants, as defined herein, in the penal sum of Seven Hundred Ninety Seven Thousand Two Hundred Seventy Eight Dollars and Eighteen Cents (\$797,278.18), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Payment Bond.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner to pay for work, labor, materials, equipment, services, or other items furnished for use and actually used in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to Owner, this obligation shall be null and void if Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds Owner harmless from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for work, labor, materials, equipment, services or other items furnished for use in the performance of the Construction Contract, provided Owner has promptly notified Contractor and Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described below) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

4.2.1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, as required by and conforming with Civil Code sections 3252 and 3091; and

4.2.2. Not having been paid within 30 days of sending the required notice, have sent a written notice to Surety (at the address described below) and sent a copy to the Owner, stating that a claim is being made under this Payment Bond and enclosing a copy of the previous written notice furnished to Contractor.

5. When the Claimant has satisfied the conditions of Paragraph 4, Surety shall promptly and at Surety's expense take the following actions:

5.1 Send an answer to the Claimant, with a copy to Owner, within 20 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

5.2 Pay or arrange for payment of any undisputed amounts.

6. Surety's total obligation shall not exceed the amount of this Payment Bond, and the amount of this Payment Bond shall be credited for any payments made in good faith by Surety.

7. Amounts owed by Owner to Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Performance Bond. By Contractor furnishing and Owner accepting this Payment Bond, they agree that all funds earned by Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work or the satisfaction of Owner's claims, including liquidated damages, under the Construction Contract.

8. Surety shall not be liable to Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. Owner shall not be liable for payment of any costs or expenses of any Claimants under this Payment Bond, and shall have under this Payment Bond no obligation to make payments to, give notices on behalf of, or otherwise have any obligation to Claimants under this Payment Bond.

9. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

10. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as costs.

11. Notice to Surety, Owner or Contractor shall be mailed or delivered to the address shown on the signature page.

12. This Payment Bond has been furnished to comply with Civil Code sections 3247 through 3252. Any provision in this Payment Bond conflicting with those statutory requirements shall

be deemed deleted and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Payment Bond shall be construed as a statutory bond and not as a common law bond.

13. Upon request by any person or entity appearing to be a potential beneficiary of this Payment Bond, the Contractor shall promptly furnish a copy of this Payment Bond or shall permit a copy to be made.

14. DEFINITIONS

14.1 Claimant: An individual or entity identified in California Civil Code sections 3181 or 3248.

14.2 Construction Contract: The agreement between Owner and Contractor identified above, including all Contract Documents and changes thereto.

CONTRACTOR, as Principal
Telfer Pavement Technologies, LLC

SURETY
Western Surety Company

By: _____

Its: _____

Address: 4522 Parker Avenue

Building 700, Suite 350

McClellan, CA 95652

FAX: 916-383-4084

By: _____

Its: _____

Address: Fisher Brown Bottrell Insurance, Inc.

P.O. Box 1490

Jackson, MS 39215-1490

FAX: 601-208-3022



Note: Signatures of those executing for Surety must be properly acknowledged by Notary. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Jim A Armstrong, Jerry G Veazey Jr, Jerry Eugene Horner Jr, Jason J Young, Trina Cobb, Linda D Whittington, Peggy L Jackson, Amanda Jean Charfauros, Brody Eric Buckley, Angela Bullie, Stephen Wesley Price Jr, Individually

of Jackson, MS, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 28th day of May, 2015.



WESTERN SURETY COMPANY

Paul T. Bruflat

Paul T. Bruflat, Vice President

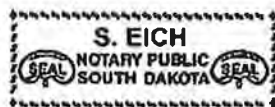
State of South Dakota
County of Minnehaha

} ss

On this 28th day of May, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich

S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 8th day of September, 2017



WESTERN SURETY COMPANY

L. Nelson

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of Mississippi

County of Hinds

On September 8, 2017 before me, Trina F. Cobb, Notary Public
Date Name and Title of Notary

personally appeared Brody Eric Buckley
Name and or Names of Signer(s)

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Trina F. Cobb
Notary Public Signature



Place Notary Public Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to the persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document Performance & Payment Bond

Document Date September 8, 2017 Number of Pages: 9 including this form

Signer's Name: Brody Eric Buckley

- ☐ Individual
☐ Corporate Officer – Title(s): _____
☐ Partner - ☐ Limited ☐ General
☐ Guardian or Conservator
☒ Attorney-in-Fact
☐ Trustee
☐ Other: _____

Signer is representing _____
Western Surety Company

RIGHT THUMBPRINT
OF SIGNER
Top of thumb

- ☐ Individual
☐ Corporate Officer – Title(s): _____
☐ Partner - ☐ Limited ☐ General
☐ Guardian or Conservator
☐ Attorney-in-Fact
☐ Trustee
☐ Other: _____

Signer is representing _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb

CONSULTANT SERVICES AGREEMENT

Authorizing Agreement No. 736

THIS AGREEMENT is entered into as of the 5th day of September, 2017, by and between the CITY OF CALISTOGA, herein called the "City," and PAVEMENT ENGINEERING, INC., herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain contract administration, engineering support, inspection and quality assurance in connection with the 2017 Microsurfacing Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The Public Works Director or his designee, shall represent City for all purposes under this Agreement. The Public Works Director or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Joseph Ririe, Principal, to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than September 5, 2017 and be completed not later than October 31, 2017. Consultant shall perform its services in accordance with the schedule as outlined in Exhibit A. Any changes

to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be lump sum at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Forty Four Thousand Four Hundred Ten Dollars (\$44,410). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance

and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the

provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the

amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

If to Consultant: Joseph L. Ririe, P.E.
Pavement Engineering, Inc.
3485 Sacramento Drive, Ste. A
San Luis Obispo, CA 93401

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work & Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

Dylan Feik, City Manager

Date: _____

9/6/17

PAVEMENT ENGINEERING, INC.

By: _____

Joseph L. Ririe, Principal

Date: _____

9/18/17

ATTEST:

By: Kathy Flamson
Kathy Flamson, City Clerk

EXHIBIT “A”

SCOPE OF WORK & COMPENSATION



August 5, 2017

MP17-414

Michael T. Kim
Public Works Director/City Engineer
City of Calistoga
414 Washington Street
Calistoga, CA 94515

AUG 14 2017

Subject: Proposal for Contract Administration, Engineering Support, Inspection and Quality Assurance for the FY 2017/2018 Pavement Maintenance Project

Dear Mike:

We appreciate the confidence you have in our services and look forward to continuing working with you and the City of Calistoga on the FY 2017/2018 Pavement Maintenance Project. This proposal outlines our services and fees:

SCOPE OF WORK

Task 1: Contract Administration, Engineering Support, Inspection and QA

1.1 – Construction Engineering Support

PEI will provide construction engineering support throughout the project. The engineer assigned to the project will work closely with the City and will provide support as requested.

1.2 – Construction Administration Services

Contract administration services include: attending meetings, including preconstruction, progress and final inspection; reviewing schedule and technical submittals; reviewing payment requests; technical change order development; and processing final payments.

1.3 - Construction Inspection Services

During paving operations, PEI will provide full-time inspection services to ensure a quality product for the City. Our inspection services are designed to provide a greater degree of confidence that the contractor's completed work will conform substantially to the design concepts reflected in the contract documents. Our daily reports will include a detailed accounting of work performed each day.

PEI's inspection staff is Caltrans certified and has performed inspection on numerous Caltrans QC/QA projects as well as other public and private projects.

Testing services include the field and laboratory testing necessary to assure that the contractor is providing the required quality of workmanship and materials during construction. Field testing involves performing field density tests using a nuclear density gauge.

During paving operations, PEI will provide one inspector to collect samples and monitor compaction. The inspector will provide field density tests using a nuclear density gauge to monitor the contractor's compaction efforts. Monitoring the compaction efforts of the contractor while the asphalt concrete materials are being placed will help ensure that optimum compaction is achieved. Once the asphalt concrete has cooled, the opportunity to obtain higher compaction is lost. Our inspector's goal is to work with the contractor by providing compaction feedback to achieve the highest relative density possible. Our inspector will also provide laydown inspection including thickness control and monitoring temperature as well as placement of HMA. The longevity of asphalt concrete is dependent upon its proper placement and compaction. Our inspectors and technicians are qualified and equipped to perform the field testing tasks for pavement rehabilitation projects.

If compaction fails during construction, PEI is equipped to provide, as additional services, the core density/ nuclear gauge correlation and/ or core densities to establish compaction as outlined in the contract documents.

1.4 - Laboratory Testing and Quality Assurance

During construction, PEI will include quality assurance testing of the asphalt concrete materials.

PEI will collect asphalt concrete samples and perform mix design tests from every 750 tons of asphalt concrete placed or one test per paving day for surface course material. Asphalt mix tests include determining the following: Stability (CTM 366), LTMD (CTM 308), Rice Gravity (CTM 309), Asphalt Content (CTM 382) and Air Voids Content (CTM 367).

During the placement of the chip and slurry seal materials, we will collect oil samples from the truck and return them to our laboratory for possible future testing. No tests will be performed unless material problems occur in the field. Aggregate samples will be collected and gradations performed to ensure the material is meeting specifications. The exact frequency of these tests can be determined; however, we propose performing one grading per day of placement.

PEI will prepare a final report that summarizes all of the laboratory tests and will address the contractor's compliance with specifications, plans, and applicable adopted standards. Copies of the compaction reports will be included. The report will outline any areas of non-compliance.

It should be noted that PEI will be monitoring the materials' and contractor's compliance to the plans and specifications throughout the project and will report non-compliant issues as soon as possible so that the City can notify the contractor that the item will need to be addressed or that a deduction will be in order.

In addition to the final report, PEI is committed to providing constant feedback throughout the project. Having up to date information on the contractor's ability to be in general conformance to the project specifications throughout the project will assist the City in managing and assuring the best possible product. Knowing immediately, in some cases the next day, that density was low or the supplied material is not meeting the specified criteria, creates a pro-active environment to correct the problems as they come up, not after the fact.

CITY RESPONSIBILITIES

As part of this project, the City of Calistoga agrees to perform the following services:

- a). Once the project is awarded by City Council, prepare the award package to send to the contractor.
- b). Labor compliance
- c) When the work is complete, prepared a staff report, resolution, and Notice of Completion (NOC) requesting the City Council to accept the work and approve the NOC.

PROPOSAL FEE & FEE BREAKDOWN

Our estimated fee to perform this work will be \$44,410. PEI has prepared an estimated fee based on our experience with similar projects and knowledge of similar construction. The contractor's actual schedule may result in a different level of effort. The outlined level of effort is based on an eight-hour day. We estimate 16 inspection days to inspect the digouts, leveling course and cape seal operations. The City will inspect the prep work and restriping.

We will invoice our work on a time and materials basis. The individual fees associated with each task will serve as guidelines for progress payments. Inspection services will be invoiced as follows:



Michael T. Kirn
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Between 0 and 4 hours will be invoiced at 4 hours
Between 4 and 8 hours will be invoiced at 8 hours


Overtime will be charged for days longer than eight hours. PEI requires a 72-hour notification of changes in the schedule or a full eight-hour day will apply. Our inspection fees account for prevailing wages.

This proposal assumes that the City will monitor the contractor, pertaining to all labor compliance issues.

The attached fee breakdown shows our projected costs for each project task, which will be invoiced on a time and material basis. The individual fees associated with each task will serve as guidelines for progress payments. All fees and costs associated with this project are subject to final negotiation with the City of Calistoga. Any change in scope may result in additional fees. The enclosed proposal conditions apply.

As always, PEI will go the extra mile and deliver services to the City of Calistoga with the highest degree of honesty, trust and professionalism. Please feel free to contact me at (805) 781-2265 with any questions.

Very truly yours,
PAVEMENT ENGINEERING INC.



Joseph L. Ririe, P.E.
Principal

Attachments: Fee Breakdown Schedule
Proposal Conditions

pc: C File, M File, MP File S/R/P

Michael T. Kirn
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**FEE BREAKDOWN FOR THE CITY OF CALISTOGA
 FY 2017/2018 PAVEMENT MAINTANCE PROJECT**

Task 1.1: Construction Engineering Support	Hourly Rate	Hours	Total
Senior Principal Engineer	\$225	16	\$3,600
Construction Manager	145	32	4,640
Total Estimated Fee Task 1.1			\$8,240
Task 1.2: Contract Administration Services	Hourly Rate	Hours	Total
Senior Principal Engineer	\$225	16	\$3,600
Construction Manager	145	32	4,640
Clerical	65	16	1,040
Total Estimated Fee Task 1.2			\$9,280
Task 1.3 Construction Inspection Services	Hourly Rate	Hours	Total
Construction Manager	\$145	32	\$4,640
Construction Inspector	125	128	16,000
Equipment / Vehicle Usage	120	16 days	1,920
Total Estimated Fee Task 1.3			\$22,560
Task 1.4 Laboratory Testing and Quality Assurance	Units Cost	Quantity	Total
Lab Manager	\$135	8	\$1,080
HMA Production Start Up	900	1	900
HMA Mix Tests	525	1	525
Aggregate Gradations	100	10	1,000
Burn off Calibration	300	1	300
Total Estimated Fee Task 1.4			\$4,330
Total Estimated Project Fee:			\$44,410

Overtime Rates
Inspection

Time and a Half
\$145 / hour

Double Time
\$170 / hour



PROPOSAL CONDITIONS

1. Proposal is valid for thirty days from the date of the proposal.
2. All work shall be performed utilizing common methods and practices of the civil engineering profession. Reports and construction documents will be signed by a registered civil engineer.
3. Fees for Lump Sum or Unit Price Proposals will be charged at the quoted price. The quoted prices include all laboratory testing costs. Fees for Engineering and Technical Services on a Time and Materials Basis will be charged at the applicable hourly rates of the current PEI Fee Schedule.
4. The proposal is based upon providing insurance with limits as defined in the referenced RFP.
5. One copy of an Engineering Report or Plans and Specifications will be provided to the Owner of a project. Additional copies are \$35 each.
6. Payment: Invoices will be submitted at the completion of the work for Engineering Reports. Inspection fees will be invoiced on a monthly basis. All invoices are due upon receipt. Interest of 1-1/2% per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts not paid within 30 days, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the client.

CONTRACT FOR CONSTRUCTION
(Agreement No. 737)

Lake Street Pavement Rehabilitation - Grant Street To Fair Way, Project Identification Number: 5402-B

THIS CONTRACT FOR CONSTRUCTION is made and entered into this 6th day of September, 2017 by and between the City of Calistoga, a municipal corporation, (hereinafter referred to as "City") and Argonaut Constructors, a California corporation, located at P. O. Box 639, Santa Rosa, California, 95402, (hereinafter referred to as "Contractor").

The City and the Contractor agree as follows:

- (1) **CONTRACT SUM:** The City agrees to pay, and the Contractor agrees to accept, in full payment for the above work, the sum of Three Hundred Fifty Three Thousand Six Hundred and Seventy Nine Dollars and Fifty Cents (\$353,679.50) for the Base Bid is to be paid in accordance with the Contract Documents.
- (2) **COMPLIANCE WITH LAW:** The City is a public agency. All provisions of law applicable to public contracts are a part of this contract to the same extent as though set forth herein and will be complied with by the Contractor.
- (3) **CONTRACT DOCUMENTS:** The following Contract Documents relating to this Contract for Construction are hereby made a part of and incorporated by reference into this Agreement: The Notice Inviting Bids, Information for Bidders, Contract Proposal, Faithful Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplemental Conditions, Special Provisions, Technical Specifications, State of California Department of Transportation Standard Plans and Specifications, 2015 edition, City of Santa Rosa Design and Construction Standards, most recent version, the Project Plans, duly issued addenda, duly Issued interpretations, approved change orders, preliminary construction schedule, Contractor's guarantee and bond, and supplemental agreements, certifications, and endorsements applicable to this work, with all modifications incorporated in said documents prior to receipt of the Contract Proposals. Any work called for in one contract document not mentioned in another is to be performed and executed the same as if mentioned in all Contract Documents.

This Agreement (including all documents referred to above and incorporated herein) represents the entire and integrated Agreement between City and Contractor for the Project and supersedes all prior negotiations, representations, or agreements, either written or oral.

This document may be amended only by written instrument, as provided in the General Conditions.

Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation.

A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

This Agreement is effective upon approval by the City Council, execution by the Contractor and concurrence by the Agency's designated representative.

CITY OF CALISTOGA,

ARGONAUT CONSTRUCTORS,
a California Corporation

By: 
Dylan Feik, City Manager

By:  ~~X~~
(Authorized Representative of Contractor)

Dated: 9/12/17

Printed Name: Michael A. Smith

Title: Vice-President

ATTEST:

(Attach Acknowledgment for Authorized
Representative of Contractor)


Kathy Flamson, City Clerk

Date: 9/13/17

(Contractor signatures must be notarized.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California

County of Sonoma

On **September 12, 2017** before me, **Kelly Torres, Notary Public**, personally appeared **Michael A. Smith**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Kelly Torres



OPTIONAL INFORMATION

Title or Type of Document: Contract for Construction
City of Calistoga
Lake Street Pvmt Rehab. Grant to Fair Way#5402B

Capacity Claimed by Signer: Vice-President of Argonaut Constructors

**COOPERATIVE AGREEMENT
(Authority to Transfer Funds)**

This Agreement, effective on 9/6/17, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Calistoga, a body politic and municipal corporation of the State of California, referred to herein as CITY.

For the purpose of this Agreement, the term PARTIES collectively refers to CALTRANS and CITY. The term PARTY refers to any one of those signatory parties individually.

RECITALS

1. CALTRANS and CITY are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) per Streets and Highways Code Sections 114 and 130.
2. This Agreement shall have no force or effect unless and until CITY has obtained an Encroachment Permit from STATE to install traffic signals and ADA compliant pedestrian improvements at State Route 128/Petrified Forest Road Intersection, referred to as PROJECT, and follows the standard CALTRANS encroachment permit process in order to complete the PROJECT.
3. CALTRANS will reimburse CITY \$105,000 from STIP/RIP funds required for PROJECT.
4. PARTIES now define in this Agreement the terms and conditions for reimbursement.

DEFINITIONS

PARTIES – The term that collectively references all of the signatory agencies to this Agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one party's individual actions legally bind the other parties.

SCOPE

5. CITY is responsible to complete all work for PROJECT.

6. All work will occur through the standard CALTRANS encroachment permit process.
7. PARTIES agree that CALTRANS will administer all state and federal subvention funds for PROJECT.

COST

8. CITY will invoice CALTRANS for the lump sum amount of \$105,000 after execution of this agreement.
9. After PARTIES agree that all work for PROJECT is complete, CITY will submit a final accounting for all costs. Based on the final accounting, CITY will refund or invoice as necessary in order to satisfy the financial commitment of this Agreement.
10. PARTIES agree that the total amount of funds paid out to CITY will not exceed \$105,000.
11. CALTRANS will pay CITY within 30 calendar days of receipt of invoices.

GENERAL CONDITIONS

12. All obligations of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
13. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS or under this Agreement. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this Agreement.
14. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work,

authority, or jurisdiction conferred upon CITY or under this Agreement. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this Agreement.

15. If CALTRANS pays CITY for any costs later determined to be unallowable, CITY will reimburse those funds to CALTRANS.
16. If work is done under contract (not completed by CITY's own employees) and is governed by the California Labor Code's definitions of a "public works" (section 1720(a)), CITY will conform to Sections 1720-1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations.
17. This Agreement is intended to be PARTIES' final expression and supersedes all prior oral understanding pertaining to PROJECT.
18. Unless otherwise documented in a maintenance agreement, CITY will maintain all the improvements.
19. This Agreement will terminate upon PROJECT completion by the CITY. However, all indemnification, audit and maintenance articles will remain in effect until terminated or modified in writing by mutual agreement.

SIGNATURES


PARTIES declare that:

1. Each PARTY is an authorized legal entity under California state law.
2. Each PARTY has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF CALISTOGA

Helena (Lenka) Culik-Caro
Deputy District Director, Design



Dylan Feik
City Manager

VERIFICATION OF FUNDS AND
AUTHORITY:

Attest:

Jeffrey Armstrong
District Budget Manager



Kathy Flamson
City Clerk

CERTIFIED AS TO FINANCIAL TERMS
AND POLICIES

By: _____
Accounting Administrator

PROPOSAL CONTRACT
AGREEMENT TO PROVIDE LABOR, MATERIALS AND EQUIPMENT
RFPS: (PW#01-5559)
TEDESCHI LITTLE LEAGUE FIELD RESTROOMS PROJECT

This AGREEMENT is made and entered into as of the date of execution by the City of Calistoga, a municipal corporation, hereinafter referred to as "CITY" and Paul Coates Construction, hereinafter referred to as "CONTRACTOR".

RECITALS

The CITY requires outside assistance to provide labor, materials and equipment to complete the following: **Tedeschi Little League Field Restrooms Project**.

CONTRACTOR represents itself as possessing the necessary skills and qualifications to provide the equipment and services required by the CITY;

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONTRACTOR agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 CONTRACTOR shall provide the necessary labor, equipment and materials to perform the work specified in the contract within 90 calendar days from Notice to Proceed.

2.0 CONTRACTOR'S OBLIGATIONS (ATTACHMENT A)

2.1 CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are described in Attachment "A", which is attached hereto, and incorporated herein by this reference, as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED LABOR, MATERIALS AND EQUIPMENT".

2.2 CONTRACTOR shall perform all work required to provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT in conformity with applicable requirements of law: Federal, State and Local.

2.3 CONTRACTOR must be registered with the Department of Industrial Relations (DIR) in order to be authorized to work on Public Works projects and must submit certified payroll to the DIR's certified payroll website.

2.4 CONTRACTOR shall maintain professional certifications as required in order to properly comply with all the CITY, State, and Federal law, including a City of Calistoga Business License.

3.0 PAYMENT FOR LABOR, MATERIALS AND EQUIPMENT (ATTACHMENT A)

3.1 Compensation: The compensation to be paid to CONTRACTOR shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed One Hundred

Twenty Nine Thousand Four Hundred Ninety-six Dollars (\$129,496.00). Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

3.2 Timing of Payment: Payment shall be made in the following manner: Thirty (30) days from receipt of invoices.

3.3 Changes in Compensation: The CONTRACTOR will not undertake any extra work that will incur costs in excess of the Contract Proposal without prior written amendment to this AGREEMENT.

4.0 SUBCONTRACTING (ATTACHMENT B)

4.1 If CONTRACTOR subcontracts for any of the equipment or support services that are to be provided under this Agreement, CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of CONTRACTOR'S subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor or CONTRACTOR and the CITY. CONTRACTOR shall bind every subcontractor to the terms of the Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the CONTRACTOR in performing this Agreement are contained in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

5.0 EQUIVALENT TERMS (ATTACHMENT C)

NOT USED

6.0 EXTRA WORK

CONTRACTOR shall not provide equipment or perform support services in excess of the DESCRIBED LABOR, MATERIALS AND EQUIPMENT, without the prior written approval of the CITY. All requests for extra work shall be by written change order submitted to the CITY prior to the delivery of such equipment or the commencement of such work.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

In the event of CONTRACTOR'S failure to prosecute, deliver, or perform the DESCRIBED EQUIPMENT/SUPPORT SERVICES, the CITY may terminate this AGREEMENT by notifying CONTRACTOR by certified mail of said termination. The City Manager shall determine any final payment due to CONTRACTOR.

9.0 COVENANTS AGAINST CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONTRACTOR, to solicit or secure this AGREEMENT, and that CONTRACTOR has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 STATUS OF CONTRACTOR

CONTRACTOR shall provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT as an independent Contractor and in pursuit of CONTRACTOR'S independent calling, and not as an employee of the CITY.

11.0 ASSIGNMENT OF CONTRACT

CONTRACTOR is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY, which shall not be unreasonably withheld.

12.0 HOLD HARMLESS

12.1 CONTRACTOR agrees to indemnify and hold the CITY and CITY officer's, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONTRACTOR or CONTRACTOR'S agents, employees, subcontractors, officials, officers or representatives. CONTRACTOR'S obligation herein includes, but is not limited to, alleged defects in the labor, materials and equipment delivered by CONTRACTOR. Upon demand, CONTRACTOR shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

12.2 CONTRACTOR'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

13.0 INSURANCE

13.1 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, as indicated:

13.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, coverage shall apply to all owned, non owned and hired vehicles.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

13.3 Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a general Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to higher limits maintained by the Contractor.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

13.4 Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The policy shall cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately

Contractor shall provide 30-day written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Town.

Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

13.5 Waiver of Subrogation. Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

14.0 RETENTION

The City shall retain 10% of such estimated value of the work done as part security for the fulfillment of the Contract by the Contractor, and shall monthly pay to the Contractor, while carrying on the work, the balance after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the Contract, or when in his judgment the total value of the work done since the last estimate amounts to less than Three Hundred Dollars (\$300.00).

15.0 BONDS

Not Applicable.

16.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within 90 calendar days of the Notice to Proceed.

17.0 WARRANTIES

A. The CONTRACTOR shall furnish a one-year warranty to the CITY in the following format:

The warranty shall be submitted to the CITY prior to the date of filing of the Completion Notice.

(SEE FOLLOWING PAGE)

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner" and Paul Coates Construction, Inc., (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Tedeschi Little League Field Restrooms Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish warranty security for the work performed pursuant to the Construction Contract in the amount of One Hundred Twenty Nine Thousand Four Hundred Ninety-Six Dollars (\$129,496.00) to guarantee replacement and repair of the improvements as described in the Construction Contract for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, being not less than ten percent (10%) of the amount payable by the terms of the Construction Contract, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal shall indemnify City for all loss that City may sustain by reason of any defective materials or workmanship which become apparent during the period of one year from and after acceptance of the Improvements by the City Council of Owner, then this obligation shall be null and void; otherwise, this obligation shall remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by Owner in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Construction Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the Owner's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner or its successors or assigns.

Surety shall provide Owner with thirty (30) days' written notice of Principal's default prior to Surety terminating, suspending or revoking the bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond, and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the Specifications.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, 2017, the names and corporate seal of each corporate body being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

By:

(Principal)

Signature

Print Name

Title

Note:

*To be signed by Principal
and Surety and acknowledgment
and notarial seal attached.*

(Surety)

(Address)

By:

Signature

Print Name

Title

18.0 DISPUTES

18.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommended methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

18.2 If the dispute is not resolved, the aggrieved party shall send to the CITY a letter outlining the dispute for City Manager's resolution.

18.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

19.0 NOTICES

19.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

19.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

CITY OF CALISTOGA
1232 Washington Street
Calistoga, CA 94515
Attention: Mike Kim
Public Works Director
Public Works Department

19.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CONTRACTOR and the proper person to receive any notice on the CONTRACTOR'S behalf is:

Paul Coates
Paul Coates Construction
P.O. Box 1006
Calistoga, CA 94515

20.0 ATTORNEY'S FEES

In the event that one party incurs expenses, including attorney's fees and costs, in enforcing the provisions of this AGREEMENT, such party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorney's fees.

21.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

PAUL COATES CONSTRUCTION, INC.

By: 
Signature

11-17-17
Date

CITY OF CALISTOGA,
a Municipal Corporation

By: 
Dylan Feik, City Manager

11/17/17
Date

ATTEST:


Kathy Flamsen, City Clerk

ATTACHMENT A

SCOPE OF WORK PROPOSAL

COMPENSATION SCHEDULE

PAUL COATES CONSTRUCTION, INC.

P. O. Box 1006, Calistoga, CA 94515
707-942-5268 broccoclstg@aol.com

September 12, 2017

TO: Mike Kirn
Public Works

RE: Budget for Bathrooms

This is for budgeting purposes only for the bathrooms; it is based on using 80% local contractors.

Budget Amount \$ 129,496.00

Includes the following:

- All site work, concrete, ADA parking, walkways to building
- 30 year comp roof
- Covered porch
- 3 doors
- Framing
- Plumbing – rough plumbing, 2 toilets, 2 urinals, 2 sinks, misc. fixtures
- Electrical – run new 1 ¼" conduit from meter panel to new restrooms;
50 amp ckt to new sub panel; GFIS plus in both restrooms, in storage
area and to exterior wall; lighting in restrooms & storage; motion sensor
light and photo controlled light at exterior & allowance for lighting fixtures
- Painting – interior & exterior, ceiling, overhand, siding, doors, gutters, downspouts
Exterior caulking & touchup
- All materials, ADA signage, air hand dryers; tp dispensers, seat cover dispensers,
ADA mirrors, sanitary napkin disposal
- Contractor fee

ATTACHMENT B

SUBCONTRACTORS

ATTACHMENT B

Subcontractors

B.A.M. Plumbing, Inc.

Baggenstos & Associates, Inc.

Blakeley Construction, Inc.

Daniel Bazzoli Concrete

Gehrett & Zunino Builders, Inc.

Modern Method Roofing

Weems Electric & Construction Co.

CONSULTANT SERVICES AGREEMENT

Related to Palisades Sewer Lift Station

THIS AGREEMENT is entered into as of the 3rd day of October, 2017, by and between the CITY OF CALISTOGA, herein called the "City," and ADOBE ASSOCIATES, INC., herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain engineering design services in connection with the Palisades Sewer Lift Station Repair Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign David Brown to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than October 3, 2017 and be completed not later than May 31, 2018. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and

incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Forty Two Thousand Three Hundred Dollars (\$42,300). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors

are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to

receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party

If to Consultant: David Brown
Adobe Associates, Inc.
1220 N. Dutton Avenue
Santa Rosa, CA 95401

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work, Schedule of Performance, Compensation
- B. Exhibit B: List of Subcontractors

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

Dylan Feik, City Manager

Date: _____

10/4/17

CONSULTANT

By: _____

David R. Brown, President

Date: _____

11/6/17

ATTEST:

Kathy Flamson

By: _____

Kathy Flamson
City Clerk

EXHIBIT A

Scope of Work, Schedule of Performance, Compensation

EXHIBIT B

List of Subcontractors

TJC and Associates, Inc.

Date: September 20, 2017

Project No.

Reference No.

EXHIBIT A

Client: **City of Calistoga**

Name: Derek Rayner

Address: 414 Washington Street

City, St, Zip: Calistoga, CA 94515

Phone: 707-942-2828

Fax: 707-942-2831

Email: drayner@ci.calistoga.ca.us

Consultant: **Adobe Associates, Inc.**

Name: David R. Brown

Address: 1220 N. Dutton Avenue

City, St, Zip: Santa Rosa, CA 95401

Phone: (707) 541-2300

Fax: (707) 541-2301

Email: dbrown@adobeinc.com

License No: RCE 41833

Project Name: **Palisades Lift Station**

Site Address: Napa Valley Vine Trail, Calistoga

APN(s): 011-260-043

Scope of Services

Task 1) Palisades Lift Station Interior Liner Repair Research and Recommendation (Civil)

Adobe Associates, Inc. (AAI) will review research provided by City of Calistoga staff as well as coordinate input from various manufacturers and public agencies that have successfully implemented interior liner repairs for sanitary sewer wet wells. AAI will compile this input and provide a letter of recommendation for the preferred method of repair.

Fee: \$2,100

Task 2) Palisades Lift Station Upgrades Preliminary Design (Civil)

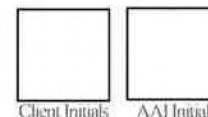
AAI will review past documentation regarding flows tributary to the Palisades Lift Station, inclusive of flows from the Silver Rose Resort development on Silverado Trail, and verify the necessary pump upgrades to accommodate the expected flows.

Fee: \$1,000

Task 3) Construction Documents for Palisades Lift Station Upgrades (Civil)

AAI will prepare construction documents for the implementation of the interior liner repair and pump upgrades. Project specifications will be included on the sheets of the construction documents. Construction documents for electrical and instrumentation upgrades will be prepared by Terry J. Cavanaugh & Associates (see Task 4 below) and included with the plans prepared under this task. An engineer's estimate will be prepared and delivered with these plans.

Fee: \$4,600



Task 4) Electrical and Instrumentation Design and Plans (Subconsultant)

Terry J. Cavanaugh and Associates (TJCAA) will perform the scope of services described in the attached proposal dated September 7, 2017.

Fee: \$34,600 (includes contract administration markup from AAI)

Additional Services: Additional services may be provided, if authorized by Client; shall be charged at the rates in effect at the time of the work (see attached current fee schedule) and paid for by Client as provided in this agreement. Additional services may include: services not outlined in Scope of Services, project representation at site meetings or public hearings, additional design and plan preparation; revisions to design and plans necessitated by conditions beyond our control.

Reimbursable Expenses: Reimbursable expenses shall consist of actual expenditures made by Consultant in the interest of the project for: blueprinting, reproduction, postage and handling of drawings, specifications and other documents; expense of overtime work requiring higher than regular rates (see Fee Schedule), if authorized by Client; expense for additional insurance coverage or limits, including professional liability insurance, requested and authorized by Client in excess of that normally carried by the Consultant; expense for transportation and living expenses in connection with out-of-town travel, authorized by Client; long distance communication; fees paid for approval of authorities having jurisdiction over the project. Compensation shall be computed based upon cost of expenses to Consultant multiplied by 1.15.

Proposal Amount:

Task 1:	Palisades Lift Station Interior Liner Repair Research and Recommendation (Civil)	\$2,100
Task 2:	Palisades Lift Station Upgrades Preliminary Design (Civil)	\$1,000
Task 3:	Construction Documents for Palisades Lift Station Upgrades (Civil)	\$4,600
Task 4:	Plans from TJCAA (Subconsultant)	\$34,600

Proposal is valid for 60 days from date of this Exhibit. Additionally, this proposal amount does not include any agency fees or title company services or services required from other design consultants.

Thank you for this opportunity to be of service.



1220 N. Dutton Ave., Santa Rosa, CA 95401
P. (707) 541-2300 F. (707) 541-2301
Website: www.adobeinc.com

<input type="text"/>	<input type="text"/>
Client Initials	AAI Initials

"A Service You Can Count On!"

SERVICES

- **Civil Engineering**
- **Land Surveying**
- **Wastewater**
- **Land Planning**
- **Regulatory**

FEE SCHEDULE For 2017

*As a dedicated provider in a professional service industry
we recognize the success of our business revolves around accessibility
to our clients and understanding and responding to their needs.*

Professional Witness	\$275/hour
Principal	\$195/hour
Licensed Staff/Associate Principal	\$135-175/hour
Project Manager	\$145-165/hour
Civil Engineer/Surveyor Designer/Technician	\$85-140/hour
CAD Draftsperson	\$85-130/hour
Field Crew (two person crew)	\$215-270/hour
Field Crew (three person crew)	\$265-375/hour
Field Crew (GPS)	\$250/hour
Storm Water Lab Tech (in-house)	\$85/hour
Clerical/Bookkeeping (in-house)	\$60-75/hour
Notary Public	\$10/signature
ATV Charge	\$45/hour
Mileage	Federal Standard Rate
Travel	Hourly Rate
Reproduction (in-house)	30" x 42" \$3.50/sheet 24" x 36" \$2.50/sheet 18" x 26" \$1.50/sheet
Photocopies	\$0.25/sheet
Coordination/Handling Fee	15% of fee
(Sub-Consultants, Agency fees paid by us, printing/reproduction by others, lab tests, postage and shipping, travel expenses, etc.)	
Authorized Overtime: Hourly Rate Multiplier	1.25
Payment by Visa/Master Card convenience fee	3%

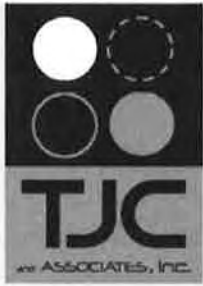


EXHIBIT B

September 29, 2017

Mr. James L. Jensen, P.E., QSD/P
Project Manager
Adobe Associates, Inc.
1220 N. Dutton Avenue
Santa Rosa, CA 95401

Structural
Engineering

SCADA

Electrical
Engineering

Instrumentation

Controls

Control Systems
Programming

Subject: City of Calistoga, Palisades Lift Station Upgrades
Instrumentation, Controls, and Electrical Engineering Services
(TJCAA Project No. 117031) – Revision 1

Dear James:

The purpose of this letter is to provide a scope for instrumentation, controls, and electrical (ICE) engineering services as requested by Adobe Associates, Inc. (AAI) for the City of Calistoga for upgrades to the existing Palisades Lift Station (Project). This letter summarizes the scope of work that will be provided by TJC and Associates, Inc. (TJCAA). Please review, and if acceptable, this letter may serve as the basis for a Scope of Work to be included in an agreement for engineering services.

Project Understanding

The City is seeking to change out three 5 HP pumps for three 10 HP pumps maintaining the existing PG&E, 3 phase, 240V electrical service. The PS was originally built as a package installation. However, the existing documentation does not appear to be accurate with respect to verified field conditions

I. TJCAA Scope of Services

Task 1. ICE Design Services

Description

TJCAA will provide engineering and drafting services necessary to define the elements of the Project that are included for ICE related engineering design services. Work anticipated to include:

- Perform field reconnaissance to verify existing service rating, equipment rating, and other electrical infrastructure conditions.
- Design replacement of existing 3 @ 5hp Flygt submersible pumps with new 3 @ 10 hp submersible pumps.
- Design replacement of existing with new motor starters, feeders, and protective devices as required to support operation of the new (larger) motors
- Existing Flygt controls/instrumentation will be removed and new control panel/instrumentation installed similar to the pine street lift station control

Sacramento Office:
2356 Gold Meadow
Way,
Suite 250
Gold River, CA 95670
p 916.853.9658

Oakland Office:
The Cathedral Building
1615 Broadway,
4th Floor
Oakland, CA 94612
p 510.251.8980

Walnut Creek Office:
2890 North Main St.,
Suite 303
Walnut Creek, CA 94597
p 925.357.2676

f 800.948.5604

www.tjcaa.com



panel. However, new control cables will be required as part of the new pumping system equipment and replacement of existing gas seals in the Class 1 Division 1 wet well.

- Design shall incorporate remote monitoring based on WonderWare mobile cloud based product (or equivalent)
- Design shall incorporate changing the existing Flygt panel to a new PLC controller and thin client HMI configured with Windows CE and Suitable thin client WonderWare platform.

Design submittals will be provided to AAI in the following packages:

- Predesign: Preliminary design summary Technical Memorandum
- 90% (Draft) design package
- Final design package

Each design package will incorporate appropriate AAI comments based on previous submittals and will update presented information consistent with the level of completion for that submittal. Design submittals will include elements defined in the table below.

Deliverables Included in Submittals					
Submittal	Calculations (PDF)	Design Drawings ¹ (PDF)	Specs ³ (PDF)	Engineer's Opinion of Probable Cost (PDF)	Signed Copies ⁴ (PDF)
Predesign	✓ ²	✓ ²		✓	
90% (Draft)		✓	✓		
Final	✓	✓	✓		✓
Notes: <ol style="list-style-type: none"> 1. Drawings will be provided in half-size (11 x 17) PDF format and delivered via e-mail. 2. Predesign load and generator calculations, plan drawings, and 1-line. 3. Specifications will be provided in traditional CSI format using MS-Word and delivered via e-mail. 4. Drawings will be provided in full-size (22 x 34) PDF format, electronically stamped and signed and delivered via e-mail. 					

Task 1.1.1. Anticipated List of Specifications

- 16001 - Electrical - General Electrical Requirements

Task 1.1.2. Anticipated Drawing List

- GE-1 Electrical Symbols and Abbreviations
- GE-2 Electrical Installation Details
- E-1 Electrical Single-Line Diagram and Grounding Schematic
- E-2 Pump Station Electrical Power, Control, & Signal Plans
- E-3 Electrical Conduit, Panelboard, and Fixture Schedules
- E-4 Pump Electrical Control Schematics
- E-5 PLC layout and Control Panel Elevation

Task 2. Bid Assistance

TJCAA engineers will be available to answer questions and clarify issues associated with aspects of the design within its Scope of Work. TJCAA does not anticipate any



involvement at on-site bid meetings or bid evaluations; however, TJCAA will be available for consultation via telephone calls on an as-needed basis.

TJCAA will also respond to any written requests for information from potential bidders.

Task 3. Engineering Services During Construction – Not Included

II. Assumptions

The scope of work detailed above is based on TJCAA's current understanding of the project requirements and is based on the following assumptions.

A. General

- Design will comply with the requirements of the 2016 California Electrical Code.
- Project Management for internal TJCAA tasks are included within the tasks defined above.
- Facility is existing; Documentation/record drawings are not accurate and condition will require verification during site field reconnaissance new.
- Preliminary design technical memorandum will include development of load estimates, generator sizing, single line diagram, and design criteria. The electrical cost elements will be provided to Client for the preliminary opinion of probable costs. Predesign design criteria and description will be a maximum of three (3) pages of text not including drawings, supporting equipment data sheets, or technical appendices.
- Adequacy of the existing PG&E service size will be verified. However, existing PG&E service assumed 240V, 3-phase and assumed to have sufficient capacity to support the larger pumps. Design of a new PG&E service is not anticipated to be required.
- Adequacy of the existing standby generator size will be verified for serving the larger pumps. However, Existing generator size will be verified but is assumed adequate to serve larger motors. Design of a new standby generator is not anticipated to be required.
- Existing instrumentation and control devices are assumed reused; only station revisions will consist of new motor controls, feeders, protective devices, and implementation of remote monitoring
- New equipment assumed to be installed in the existing pump control panel. A new panel or enclosure will not be required.
- Formal City or County building department and construction permit review, Title 24 energy calculations, and completion of permit forms or payment of permitting fees is not included.
- AAI will provide new pump electrical power requirements and other project technical details necessary to complete the ICE design work.
- TJCAA personnel will coordinate with the City, AAI, and remote monitoring SCADA package provider regarding the required system



operations and remote monitoring requirements. New SCADA system work assumed based on existing City product standards.

- Design documents and details for civil, structural (including any required seismic anchoring criteria), mechanical, HVAC, and other disciplines will be completed by AAI.
- AutoCAD site and plan drawings in ".DWG" format will be provided by AAI to TJCAA suitable for use as backgrounds for detailing electrical requirements. Design drawings will be created by TJCAA for the project using TJCAA's standard format in AutoCAD. Drawing title block will be provided by AAI in AutoCAD format suitable for use as a Reference File. Final drawings will be provided to AAI in electronic format for publishing and distribution by Others. Printing costs are not included in this proposal.
- Material Specifications will conform to CSI Traditional (16 Division) format, developed in MS-Word, and will be provided via e-mail. All specifications front end sections and non-electrical technical sections (i.e., non-Division 16) shall be prepared by the AAI.
- Attendance at one (1) progress meetings by TJCAA Engineering Staff at Client offices is included for coordination of the ICE design efforts. Other design discussions are assumed to be handled by conference call.

B. Items that are NOT included within the Scope of Work:

- Engineering Services During Construction
- Design, coordination, and payment of engineering fees associated with a new electrical service.
- Development of seismic anchoring criteria or structural backgrounds
- Responding to questions and/or comments generated during the permitting process or generated by the local jurisdiction
- Assistance with obtaining construction permitting
- Performing arc flash power analysis studies

III. Additional Services

No "Additional Services" are anticipated at this time. Should "Additional Services" be identified, TJCAA will perform such "Additional Services" services only if mutually agreed to in writing by AAI and TJCAA.

IV. Deliverables

The Consultant will provide the items shown in the "**Deliverables Included in Submittals**" table above to the Client as part of this agreement.

TJCAA will provide monthly project invoices including current charges and budget status to the AAI.



V. Schedule

Schedule will be coordinated with AAI. A preliminary schedule was assumed for the purposes of developing this fee proposal.

- Preliminary design technical memorandum: November 2017
- Draft Final design plans and specifications: January 2018
- Final design plans and specifications: March 2018
- Bid Period: April 2018
- Construction will begin in late spring of 2018

VI. Consultant's Compensation

Fees quoted assume that the design portion of the project will commence in 2017 and completed in 2018.

Based on the above understanding, scope, assumptions, and our conversations and e-mails with AAI, we propose to provide engineering services on a time and materials basis with the following upper limits.

<i>Task 1 – ICE Design Services</i>	
ICE	\$ 28,050
<i>Task 2 – Bid Assistance</i>	
ICE	\$ 2,000
TJCAA Total →→	\$30,050

TJCAA will invoice services on a monthly basis using the TJCAA Rate Schedule in effect at the time services are performed. TJCAA's current 2017 Rate Schedule is attached.

TJCAA looks forward to working with AAI on this project. Please feel free to call me at (510) 251-8980 should you have any questions or require any additional information.



Sincerely,

A handwritten signature in blue ink, reading "Paul Giorsetto".

Paul Giorsetto
Vice President
TJC and Associates, Inc.

file: 117031 - 1.0

CONSULTANT SERVICES AGREEMENT

Environmental Science Associates (ESA) Contract No. 741

THIS AGREEMENT is entered into as of the 3rd day of October, 2017, by and between the CITY OF CALISTOGA, herein called the "City," and ENVIRONMENTAL SCIENCE ASSOCIATES (ESA), herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain environmental review and permitting compliance services in connection with the Pioneer Park Pedestrian Bridge Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Aaron Fulton, P.E. to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than October 4, 2017 and be completed not later than May 31, 2018. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and

incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit B must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed One Hundred Thousand Dollars (\$100,000.00). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of

either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City (Exhibit B).

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep

in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under

its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the

amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

If to Consultant: Ann Borgonovo, P.E.
Environmental Science Associates
550 Kearny Street, Suite 800
San Francisco, CA 94108

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work, Schedule of Performance, Compensation
- B. Exhibit B: Sub-Consultants

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and sub-consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

Date: 11/20/17

ENVIRONMENTAL SCIENCE
ASSOCIATES

By: 
Ann Borgonovo, Vice President

Date: 11/20/17

ATTEST:

By: 
Kathy Flanson, City Clerk

EXHIBIT A

Scope of Work, Schedule, Compensation

Exhibit A - Scope of Work

Introduction

Project Overview & Understanding




The Calistoga Pedestrian Overcrossing Project (Project) will include bridge abutment construction, minor tree removal, vegetation management within the riparian corridor, grading outside the riparian corridor and relocation of a temporary pedestrian overcrossing used during the construction of the Berry Street Bridge to a permanent location in Pioneer Park. Additionally, the City would like to limit the extent of work within CDFW and RWQCB jurisdictions to facilitate a more streamlined permitting process.

The permanent bridge location site was previously identified and designed by ESA and MT&Co under a contract with the Napa County Resource Conservation District and the California Department of Fish & Wildlife (FRGP program) and also included a fish passage improvement project that removes the existing in-stream crossing (partial fish passage barrier) at Pioneer Park. Under the proposed Calistoga Pedestrian Overcrossing Project, the City of Calistoga would fund the final design, hydraulic analysis, and permitting to complete bridge construction which will set the stage for future removal of the in-channel fish passage barrier by others. The City of Calistoga endeavors to complete all necessary permitting and design services so that bridge relocation could occur between June and October of 2018 and has contracted with Pound Management to facilitate

and coordinate final design and permitting for the project. To integrate the new bridge, Pioneer Park, and ongoing planning efforts for a new Calistoga Community Center, the City prefers to relocate the bridge approximately 50 feet upstream of the existing design location. ESA understands that additional impacts to riparian vegetation and concomitant mitigation requirements may influence the final bridge location.

Required Services

The Calistoga Pedestrian Overcrossing Project will require a thorough understanding and integration of project opportunities, permitting constraints, and schedule. This Scope of Work includes the following tasks which are described in detail below.

-  Project Management
-  CEQA IS/MND Support
-  Hydraulic Design
-  No-Rise Certification
-  Permitting
-  Implementation Design

Where tasks and subtasks identify specific assumptions on the required level of effort (hours), ESA has based this assumption on our understanding of the project and similar projects.

In the event actual hours and level of effort exceed our assumptions, ESA will notify the City in advance and adjust the scope of work, budget, and contract as needed.

Task 1. Project Management

Under Task 1, ESA will provide ongoing coordination and communication with the project team (Pound Management, City of Calistoga and subconsultants) to organize and facilitate project deliverables included in this scope of work. As part of this effort ESA will schedule and lead progress meetings to summarize completed work, next steps, and adapt to changing project conditions, as required. This task includes budget management and tracking and updating the project schedule to prioritize task deliverables critical to project implementation.

Deliverables:

- Project design schedule defining key milestones and deliverable dates to meet June to October 2018 construction timeline.
- Ongoing project team coordination and progress meetings (email, conference calls, etc.)

Task 2. CEQA IS/MND Support

The Calistoga Pedestrian Overcrossing Project is a discretionary project subject to the California Environmental Quality Act (CEQA). Based on the degree and nature of anticipated impacts and similarity with the Berry Street Bridge Replacement Project, we assume an IS/MND is an appropriate level of CEQA compliance. Under Task 2 ESA will support City of Calistoga planning staff as they lead development of an IS/MND for the Project. Under

this task, ESA will provide technical assistance in biological and cultural resources as described in the subtasks below.

Assumptions

- The City of Calistoga will lead development, filing, and approval of the IS/MND.

2.1 – Cultural Resources Technical Memorandum and Support

Although the project will not require a USACE 404 permit, it is anticipated that a cultural resources technical study will be required to support the CEQA IS/MND. In 2014, an ESA archaeologist was present during geotechnical investigations completed for the Project. No cultural materials or other evidence of past human use or occupation (such as midden soil) was observed. To assist the City with CEQA documentation, ESA will provide a technical memorandum that describes the results of the monitoring and observations made in 2014. The memorandum will also include a review of records held at the Northwest Information Center of the California Historical Resources Information System and documentation of preliminary communication with the local Native American community.

Recommendations for additional actions will be provided in the technical memorandum to reduce potential impact to cultural resources to a less-than-significant level. Recommended mitigation could include monitoring during project implementation and/or actions to follow in the event of an inadvertent discovery of cultural materials or human remains.

Deliverables:

- Cultural Resources Technical Memorandum documenting 2014 field observations and records review results.
- Documentation of communication with local Native American Community (Certified Mail or other).

Assumptions:

- No site visit is required
- City will complete Native American consultation per Assembly Bill 52

2.2 – Biological Resource Inventory & Technical Memorandum

We understand the City of Calistoga will lead the CEQA IS/MND task but will require a technical memorandum to support the biological resources section of the document. Under this Task, ESA will complete a site survey to identify and describe existing habitat, update the CNDDB database search completed for the Berry Street Bridge project, and document findings in a Biological Resources Technical Memorandum to support the City's IS/MND and regulatory agency coordination. The memorandum will describe the habitats present at the site and special-status species that are either known to occur, or have potential to occur within the project area that require consideration under CEQA. The memorandum will identify specific minimization and mitigation measures for impacts associated with the project.

Deliverables:

- Biological Resources Technical Memorandum

Assumptions

- No special-special status species are required

Task 3. Hydraulic Design

The current Project design includes bridge abutments and bridge deck (encroachments) within the FEMA floodway and below the Base Flood Elevation (BFE). Initial hydraulic modeling indicated that the project would elicit a small rise in the BFE from the proposed bridge location to approximately one hundred feet upstream. Under Task 3, ESA will update the Effective FEMA hydraulic model to represent contemporary conditions and the Project design including adding in the existing pedestrian (in-channel) crossing and updated topographic data. ESA will develop a single design conditions model scenario that limits impacts to the BFE by either raising the bridge above the BFE or grading above the top of bank to offset losses in flow area associated with the bridge and abutments. The model scenarios would approximate flatwork (concrete conform slopes provided by the City) between the adjacent floodplain and bridge landings with ineffective or blocked obstruction flow areas. The project design, including ineffective flow areas would be incorporated directly into the hydraulic model but not represented in the design drawings.

Deliverables:

- Final recommendations for bridge low chord and abutment elevations to minimize impacts to BFE.

Assumptions

- We assume minor bank grading outside USACE jurisdiction and below the top of bank will not be required to mitigate flood

impacts of the bridge to maintain a No-Rise requirement.

- We anticipate this task taking up to forty-eight (48) hours of staff time.

Task 4. No-Rise Certification

The Calistoga Pedestrian Overcrossing project is within a FEMA Special Flood Hazard Area (SFHA) and the floodway of the Napa River. As such it will require compliance with the National Flood Insurance Program (NFIP) as implemented by the City of Calistoga (City) floodplain manager. The project cannot result in a rise to the 100-yr BFE at or adjacent to the site. For projects within floodways, the City floodplain ordinance and NFIP requires preparation of a “No-Rise” certification and supporting hydraulic analyses to confirm the project will not result in a rise to the BFE. Under Task 4 ESA will develop a duplicate effective, corrected effective, and compile the final design model scenarios and summarize the final hydraulic analysis completed under Task 3 into a no rise report and certification for review and approval by the City Floodplain Manager.

Deliverables

- No-Rise report and certification

Assumptions

- The final bridge and grading design identified in Task 3 does not increase 100-yr BFE.
- Hydrology from the effective FEMA FIS will be used for NFIP compliance.
- ESA will utilize and update the effective HEC-RAS model developed for the Berry Street Bridge Replacement Project.

Task 5. Permitting

Based on the City’s goals and proposed project actions relative to the contemporary regulatory environment, ESA has identified a permitting approach that we believe is commensurate with the anticipated level of environmental impact and structured to facilitate flexibility in the scope of work to respond to regulatory agency requirements. The approach assumes impacts to USACE jurisdiction will be avoided, that the USACE will not take jurisdiction over the project, and therefore consultation with NMFS and USFWS is not required. The base scope of work includes regulatory agency coordination and preparation of a CDFW Lake & Streambed Alteration Agreement and RWQCB 401 certification application.

Assumptions

- Project activities would occur outside USACE jurisdiction and would not require a Clean Water Act (CWA) Section 404 permit or Endangered Species Act consultation.
- Project activities within the riparian corridor will be limited to tree removal and vegetation management (no grading).
- The City will provide payment for permit application fees.
- This scope does not include preparation of a compensatory mitigation and monitoring plan for temporary or permanent impacts.
- The project will not result in “take” of state-listed species and will not require an incidental take permit under Section 2081 of the California Endangered Species Act.
- This task does not include preparation or support for any required local permits (building permits, grading permits, etc.) or Right of Way acquisition/coordination.

Task 5.1 Regulatory Agency Coordination

As noted above, the City intends to minimize impacts to the riparian corridor and jurisdictional areas and would like to explore permitting options that limit long-term monitoring requirements. To support this objective, ESA will lead one (1) pre-application site meeting with regulatory agency staff. This meeting is intended to communicate the project actions and schedule to regulatory staff prior to submittal of permit applications and to confirm the level of permitting required from each of the regulatory agencies involved (USACE, CDFW, and RWQCB) associated with the proposed bridge locations. To support this discussion, ESA will prepare and present project graphics that summarize impacts of the project on potentially jurisdictional areas including tree removal and bridge abutment siting. This meeting will focus on establishing a collaborative environment for resource agency input and result in a final determination from each agency on the required level of permitting. Subsequent permitting tasks are contingent on regulatory agency input and based on our experience with similar work. While difficult to estimate at this time, for budgeting purposes we assume site meetings and conference calls to track regulatory agency review and permit development progress will require up to forty-eight (48) hours of ESA staff time.

Deliverables:

- Coordinate, organize, and prepare materials for one (1) regulatory agency site meeting
- ESA will prepare and present project maps that identify the project footprint and impacts relative to the top of bank that demonstrates minor impacts to jurisdictional areas.

Task 5.2 Jurisdictional Wetland Assessment (Optional Task)

The proposed project is expected to be designed to avoid impacts to Waters of the United States as defined in Section 404 of the CWA. Although the project is expected to completely occur outside of waters of the U.S., a wetland delineation survey and delineated wetland map may be requested by the USACE to confirm activities are completely outside of waters protected by Section 404 of the CWA.

This optional task includes a half-day field survey to map the Ordinary High Water Mark according to Section 404 in order to complete a potential waters of the U.S. and waters of the State map. A brief technical memorandum will also be completed to explain the methods and results of the wetland assessment and clearly show that the project would occur completely outside Section 404 jurisdiction.

Deliverables:

- Wetland Assessment Technical Memorandum including a map displaying Wetland and Waters of the U.S. and Waters of the State.

Task 5.3 CDFW Lake & Streambed Alteration Agreement Application

Projects that will temporarily or permanently obstruct the flow or alter the bed, channel, or bank of a river or stream must obtain a Lake and Streambed Alteration Agreement (LSAA) from CDFW. In practice, this requirement also applies to impacts to riparian or wetland habitats adjacent to streams and rivers. ESA will prepare an application package for a LSAA for impacts to areas under CDFW purview. As required by CDFW, this application will include a memorandum describing

the habitats present at the site and special-status species that are either known to occur, or have potential to occur within the project area. The general habitat assessment will be submitted with the permit application package. The permit package will disclose impacts to state-protected species and habitats, identify minimization and mitigation measures for impacts (if necessary), and include a copy of the CEQA compliance document prepared for the project.

Following one (1) round of City review and comment on the draft application package, ESA will revise and prepare a final application package for submittal to CDFW.

Deliverables:

- Lake and streambed alteration permit application, draft and final (2 printed copies and .pdf files).

Assumptions:

- ESA will rely on biological studies already completed for the Berry Street Bridge and biological databases available for the project area. No detailed habitat surveys or sensitive species are included in this scope of work.

Task 5.4 RWQCB CWA Section 401 Water Quality Certification Application

In addition to federal jurisdictional waters and/or wetlands on the project site, the site is expected to support waters of the State under Section 401 of the Clean Water Act. Therefore, permits from the RWQCB under Section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act would be required for project impacts to State waters.

ESA will prepare an application for Clean Water Act 401 Water Quality Certification and/or a Report of Waste Discharge for submittal to the San Francisco Bay RWQCB. The application will describe project activities, construction methods, impacts on jurisdictional waters and proposed on-site mitigation, if applicable. Following one round of City review and comment on the draft application package, ESA will revise and prepare a final application package for submittal to the RWQCB.

Deliverables:

- RWQCB Water Quality Certification application, draft and final (2 printed copies and .pdf files).

Assumptions:

- Impacts to existing vegetation will be minimized to the extent practicable. We anticipate on-site revegetation will offset vegetation impacts and that development of a mitigation monitoring and reporting program is not required or included in this scope of work.

Task 6. Implementation Design

We understand the City of Calistoga intends to amend/supplement existing construction contracts to implement the project. Furthermore, the City would like to develop implementation-level design drawings for the proposed project elements to guide a City managed contractor in completing the Pedestrian Overcrossing Project including tree removals, construction of the bridge abutments, placement of the bridge, and native plant revegetation. As described above, the existing design plans and specifications were developed with funding from the CDFW FRGP and include fish passage, grading elements, civil/site features, and

ramps that will not be part of the City funded project designed under this scope of work. Under Task 6 ESA and its subcontractors (MT&Co & A3Geo) will modify the existing drawings, as developed under the CDFW FRGP deliverable, by removing sheets and items not in the implementation design, adding clarifying annotation, and other minor drafting tasks to produce an implementation-level set of construction Drawings (See Assumed Plan Revisions Table, below). The Implementation Design Drawings will include revisions to reflect the final bridge location, the structural design sheets, structural calculations to reflect a total bridge span of 110 feet, and any necessary changes to pier depth and pile cap dimensions. The Drawings will include updated abutment design elevations, as determined through the hydraulic modeling task, geotechnical design review, and native revegetation planting for approximately 0.005 acres. Because the City anticipates moving the final bridge location approximately fifty (50) feet upstream, A3Geo will conduct a geotechnical review of the proposed bridge site, revised foundation plans, and provide a technical memorandum with geotechnical design recommendations and requirements to document consistency with previous geotechnical analysis and reporting completed for the project. ESA and MT&Co will provide special provisions in Caltrans 2010 format for the project elements described above.

Deliverables:

- Geotechnical site and final foundation plan review
- Updated Geotechnical design recommendations technical memorandum based on previous work
- Revised plan drawings
 - Tree Removal Plan
 - Native Revegetation Plan

- Pedestrian Bridge Plan & Details (Structural Design)
- Incorporate recommended abutment design elevation
- Updated special provisions in Caltrans 2010 format
- Updated engineer's estimate

Assumptions:

- No additional Geotechnical borings will be required. Construction period geotechnical observations will be required but are not included in this scope of work.
- Incorporate one (1) round of City comments.
- Civil site feature design (ADA paths, ramps, benches, concrete flatwork, railings, etc) will be designed and implemented by others.
- Our estimated level of effort is based on the expected plan revisions identified below.
- Pound Management or the City of Calistoga will prepare the necessary bid package or contract amendment documentation (Division I & II specifications, contracting, and notifications) or other contracting documents to support implementation.
- Final bridge location will be within fifty (50) of the current (2016) design.

Assumed Plan Revisions

Sheet	Description
G-01	Update Project Name, Annotation
G-02	No Changes
G-03	Update General Notes
G-04	Remove Items Not in Contract (NIC)
D-01	Remove Items NIC
D-02	Remove Sheet

D-03	Remove Sheet
C-01	Remove Sheet
C-02	Remove Sheet
C-03	Remove Sheet
C-04	Remove Sheet
C-05	Remove Sheet
C-06	Remove Sheet
C-07	Remove Civil Features, Items NIC
C-08	Remove Sheet
S-01	Update Per 110' Span & Details
S-02	Update Per 110' Span & Details
S-03	Update Per 110' Span & Details
R-01	Remove Items NIC, Add Plantings
R-02	Remove Items NIC

Summary of Costs

Task	Description	Cost
1	Project Management	\$6,000
2	CEQA/ISMND Support	\$18,500
3	Hydraulic Design	\$7,400
4	No Rise Certification	\$8,500
5.1	Regulatory Agency Coordination	\$6,900
5.2	Wetland Delineation (Optional)	\$5,400
5.3	CDFW LSAA Application	\$6,900
5.4	RWQCB 401 WQC Application	\$5,800
6.1	Design Plan Updates	\$26,000
6.2	Structural Design Updates	\$7,200
	Expenses	\$1,400
	Total (Including Optional Tasks)	\$100,000

EXHIBIT B

Sub-Consultants

Mark Thomas Company
A3Geo

PROFESSIONAL SERVICES AGREEMENT

Napa County Bicycle Coalition

Authorizing Agreement No. 742

THIS AGREEMENT is entered into as of the 17 day of October, 2017 by and between the CITY OF CALISTOGA herein called the "City", and Napa County Bicycle Coalition (Napa Bike), herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain bicycle education and training services for the local lodging and wine industries through TDA-3 grant funding; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than the date written above and, be completed not later than one year from the same. Any changes to these dates must be approved in writing by the Public Works Director or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall not exceed Ten Thousand One Hundred and Seventy Eight Dollars (\$10,078.00).

B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. No Waiver of Defects. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

6. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

7. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

9. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or

otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

10. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

11. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

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13. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

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15. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

16. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

17. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole

property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

18. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

19. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

20. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

21. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: Patrick Band, Executive Director
Napa County Bicycle Coalition
PO Box 5157
Napa, CA 94581

22. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

23. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

24. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

25. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

26. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

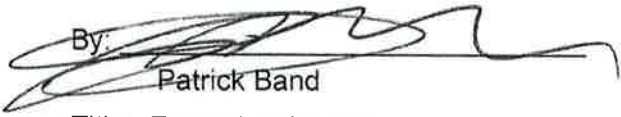
27. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik
Title: City Manager

NAPA COUNTY BICYCLE COALITION

By: 
Patrick Band
Title: Executive Director

ATTEST


Kathy Flamsa, City Clerk

EXHIBIT "A"



Napa County Bicycle Coalition Project Funding Proposal

Visitor Safety & Community Education
Cities of Calistoga & Saint Helena

Project Background:

A 2016 survey of Napa Valley lodging facilities indicated strong interest in learning more about bicycles as a guest amenity, and associated logistical, safety, and guest experience considerations. Based on conversations with existing bicycle tour companies operating in the Valley, there is a wide spectrum of experience levels among those using day-use rental bikes. Among winery tasting room operators, there is a significant potential for increased awareness about the unique opportunities and challenges presented by guests arriving by bicycle.

Project Outline:

We propose a series of community-based education and safety activities to address the unique opportunities and challenges presented by increased use of bicycles for both recreation and transportation.

1. Stakeholder Engagement - Host no fewer than two Bicycle Amenity Workshops (one each in St. Helena and Calistoga), providing lodging facility and tasting room operators an opportunity to learn about bicycle-based tourism in the valley. These events would bring together local bicycle tour and rental vendors, cycling groups, public safety agencies, and City staff in an workshop format, allowing attendees to ask questions, develop relationships, and better understand this growing sector of our transportation and tourism landscape.
2. Community Forum - Parallel to the Bicycle Amenity Workshops, we propose hosting a Community Forum on Cycling in the City of Calistoga, to bring together local residents and business owners, and have a conversation around existing cycling infrastructure, barriers to increased bicycle ridership. This event could address some public outreach goals of the upcoming countywide bicycle plan update.
3. Direct Education - Follow up with Workshop attendees and other identified lodging and tasting room operators who express interest, schedule one-on-one conversations to explore opportunities to increase the percentage of guests riding bicycles, while addressing safety and accessibility challenges.
4. Ongoing Education & Resources - Share contacts and resources around bicycle rentals, safety, maintenance, and storage, including opportunities for grant-funded bicycle racks and other services that may benefit guests and the community as a whole. Provide copies of the Countywide Bicycle Map and other resources.

Estimated Reach & Budget:

We estimate to engage a minimum of 12 lodging facilities and 40 winery and tasting room operators through this project, reaching untold thousands of residents and visitors. Our estimated cost for this work is \$10,000. If funding is approved, work could begin as early as Summer 2017.



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Revised 9/8/17

PROFESSIONAL SERVICES AGREEMENT
Traffic Study for the Calistoga Vista Project
Authorizing Agreement No. 743

THIS AGREEMENT is entered into as of the 17th day of October, 2017 by and between the CITY OF CALISTOGA herein called the "City", and Whitlock & Weinberger Transportation, Inc. (W-Trans), herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain traffic study services in connection with the Calistoga Vista Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than the date written above and, be completed not later than five weeks from the same. Any changes to these dates must be approved in writing by the Public Works Director or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed One Thousand Eight Hundred Dollars (\$1800.00). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of One Thousand Eight Hundred Dollars (\$1800.00).

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the

action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

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18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: Whitlock & Weinberger Transportation, Inc.
490 Mendocino Ave., Suite 201
Santa Rosa, CA 95401

21. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or

relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.


24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

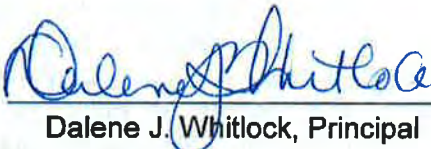
26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

WHITLOCK & WEINBERGER
TRANSPORTATION, INC.

By: 
Dalene J. Whitlock, Principal

ATTEST


Kathy Flanson, City Clerk

EXHIBIT "A"

(Scope of Work)



September 7, 2017

Mr. Erik Lundquist
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Proposal to Prepare a Traffic Study for the Calistoga Vista Project

Dear Mr. Lundquist;

W-Trans is pleased to provide this proposal to complete an analysis of potential traffic impacts associated with the Calistoga Village project to be located at 1506 Grant Street in the City of Calistoga. As you know, we have completed an initial review of the project's trip generation, and will focus on access conditions prior to preparing an updated draft study for your review. The following scope of services is suggested based on our conversation.

Tasks

1. The analysis as previously prepared will be updated if necessary to reflect any changes to the project description and site plan.
2. A field visit of the project site and study area will be conducted. Specific attention will be paid to sight distance for both exiting and entering movements at the site's driveway and potential conflicts with other driveways. Appropriate field notes and photos will be taken.
3. Potential conflicts at the driveway locations and other operational concerns associated with the skewed alignment of Stevenson Street and resulting wide intersection with Grant Street will be specifically addressed.
4. Potential impacts at the intersection of Lincoln Avenue (SR 29)/Stevenson Street will be reviewed within the context of the City's Pedestrian Safety Assessment.
5. Cumulative impacts will be assessed based on the project's consistency with the citywide analysis prepared for the traffic impact fee adoption. Text from the fee study will be incorporated as appropriate to describe the assumptions, analysis, conclusions and recommendations from that document that are relevant to the currently proposed project.
6. An updated draft letter report that provides details of the analysis and findings will be prepared and submitted for your review.
7. Your comments will be addressed and a final letter report submitted. Comments that require analysis not included in the original scope of work will be considered beyond the scope of our contract.

Exclusions – The scope of services includes only those items that are specifically identified above. Any additional services, such as meetings or hearings, requests for further analysis, multiple rounds of comments, or responding to peer review comments, if needed would be provided on a time and materials basis after receiving written authorization for the extra work.

Schedule and Budget

The updated draft report can be submitted for your comments within approximately three to four weeks following receipt of the signed contract. Our services will be conducted on a fixed fee basis. Monthly invoices indicating

Mr. Erik Lundquist

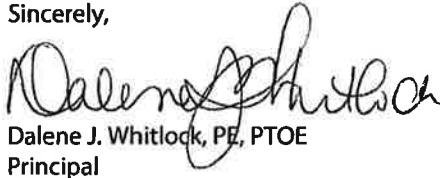
Page 2

September 7, 2017

the percent complete will be provided electronically unless a hard copy via mail is requested. The fee for this work is \$1,800.

Please forward a contract or Purchase Order if you wish to initiate work. This proposal will remain a firm offer for 90 days from the date of this letter. Thank you for giving us the opportunity to propose on these services.

Sincerely,

A handwritten signature in black ink, appearing to read "Dalene J. Whitlock". The signature is fluid and cursive, with the first name "Dalene" being more prominent.

Dalene J. Whitlock, PE, PTOE
Principal

DJW/djw/CAL041-1.P2

**MUTUAL AID AGREEMENT BY AND BETWEEN
THE CITY OF CALISTOGA AND THE CITY OF FAIRFIELD**

THIS MUTUAL AID AGREEMENT ("Agreement") is dated this 18th day of October 2017 by and between the municipal corporations, the City of Calistoga and the City of Fairfield.

Each of the above agencies may be referred to in this Agreement as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the City of Calistoga has requested mutual aid assistance from the City of Fairfield as the catastrophic fires impacting the City of Calistoga has seriously impacted its ability to deliver essential public safety services ; and

WHEREAS, the City of Fairfield is able and willing to provide two patrol cars for use by police personnel in the City of Calistoga on a temporary basis in order to address its urgent law enforcement needs; and

WHEREAS, the jurisdictions of each Party are located in such a manner as to allow each Party to render mutual assistance to the other Parties in accordance with Sections 13863 and 13877 of the Health and Safety Code and Section 55632 of the Government Code; and

WHEREAS, the City of Fairfield wishes to provide mutual aid to the City of Calistoga pursuant to the terms and conditions contained in this Agreement.

NOW THEREFORE the Parties agree as follows:

TERMS

1. MUTUAL AID PROVISION

The City of Fairfield shall provide mutual aid to the City of Calistoga, specifically in the form of two (2) black, unmarked patrol vehicles for the use of the Calistoga Police Department in its patrolling, crime prevention, safety education, emergency medical services, emergency support, and any other police protection services as needed.

2. TERM

The term of this Agreement shall be for twenty-one (21) days commencing on the date of this Agreement, unless terminated earlier pursuant to Section 3 or Section 6.

3. LIMITATIONS ON MUTUAL AID

Equipment provided under this Agreement remains subject to recall at any time. In the event the City of Fairfield determines, in its sole discretion that the mutual aid provided under this Agreement interferes with its responsibility or ability to respond to emergencies or other calls within its own jurisdiction, the City of Calistoga shall return the equipment upon at least twenty-four (24) hours advance notification from the City of Fairfield. If such notice is not practicable, the City of Fairfield shall give the City of Calistoga the most immediate and earliest possible notice of the recall.

4. LIABILITY

- a. The City of Calistoga shall indemnify, defend, and hold harmless the City of Fairfield and its officers, officials, employees, agents, and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs including, but not limited to, attorneys' fees, expert and consultant fees, and other costs and fees of litigation in respect to bodily injury, death and property damage arising from or connected with the alleged negligence, intentional or willful misconduct, or other legal fault of the City of Calistoga, its agents, officers, officials, employees or representatives in the performance of this Agreement.
- b. The indemnification contained in this Agreement includes, but is not limited to, any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of the City of Calistoga, or any of their agents, officers, employees or representatives, or their performance under the terms of this Agreement.

The indemnity obligations of this Agreement shall survive the expiration or earlier termination of this Agreement.

5. INSURANCE

The City of Calistoga at its sole cost and expense, shall carry insurance, or self-insure, its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property (apparatus and equipment), and business automobile liability adequate to cover its potential liabilities under this Agreement. The City of Calistoga is responsible for its own self-insured retentions and deductibles. The City of Calistoga agrees to provide the City of Fairfield fifteen (15) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverage while this Agreement is in effect. Failure to maintain insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

6. TERMINATION

- a. The City of Calistoga may terminate this Agreement for any reason or no reason, immediately upon notice in writing to the City of Fairfield's City Manager. The City of Calistoga agrees to return the equipment provided by the City of Fairfield, specified in Section 1, on or before the effective date of such notice.
- b. Section 2 notwithstanding, the City of Fairfield may terminate this Agreement for any reason or no reason, immediately upon notice in writing to the City of Calistoga's City Manager. The City of Calistoga agrees to return the equipment provided by the City of Fairfield, specified in Section 1, on or before the effective date of such notice.

7. AGREEMENT NOT EXCLUSIVE

This Agreement does not prevent and shall not be deemed to impair any Party's right to enter into additional mutual aid agreements as that Party deems necessary and proper.

8. NO THIRD PARTY BENEFICIARIES

The Parties agree that the provisions of this Agreement are not intended to create or clarify any rights in third parties not a party to this Agreement. In addition, no third party shall have any right of action under this Agreement. This Agreement shall not be enforceable by any parties other than the Parties.

9. ENTIRE AGREEMENT

This Agreement contains the entire Agreement of the Parties with respect to the subject matter, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a written agreement signed by all Parties.

10. GOVERNING LAW

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be initiated exclusively in the Solano County Superior Court.

11. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the successors and assignees of the Parties.

12. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which

shall constitute an original.

13. SEVERABILITY

In the event that any provision or portion of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision or portion shall be severable from this Agreement. Such invalidity, illegality or unenforceability shall not be construed to have any effect on the validity, legality or enforceability of the remaining provisions or portions of this Agreement.

14. AUTHORITY TO ENTER AGREEMENT

Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

CITY OF FAIRFIELD

Date:

ATTEST:

Clerk, City of Fairfield

By:

City Manager, City of Fairfield

CITY OF CALISTOGA

Date:

ATTEST:

Clerk, City of Calistoga

By:

City Manager, City of Calistoga

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into as of **October 2, 2017**, ("**Effective Date**") by and between Calistoga Ventures, LLC, c/o David Jackson ("**Landlord**") and the City of Calistoga, a municipal corporation ("**Tenant**").

1. PROPERTY.

1.1 Property. Landlord is in possession of certain property located at 1429 Lincoln Avenue, Calistoga, California, 94515, (APN 011-205-007) legally described on **Exhibit A** attached hereto and incorporated herein by reference and depicted on **Exhibit B** attached hereto and incorporated herein by reference ("**Property**").

1.2 Landlord's Reserved Rights. Landlord and his representatives reserve the right to enter the Property at any time.

1.3 Tenant shall maintain at least one (1) parking stall at all times for use of the Landlord.

1.4 Tenant, with the consent of the Landlord, will be allowed to post appropriate signage on the property to designate "term parking limits" and "public parking" area.

2. TERM.

2.1 Term. The "**Term**" of this Lease shall begin on **10/02/17** (the "**Commencement Date**") and shall continue until the completion of the Lincoln Avenue Bridge Project. The Lincoln Avenue Bridge Project shall be considered complete when the existing public parking lot behind the Calistoga Fire Station has been vacated by CalTRANS and is re-opened for public parking. Tenant may terminate the tenancy by giving written notice on any date to the Landlord at least 30 days prior to the intended termination date. This Lease shall be deemed terminated on the date set forth in the written notice. Should the tenant request an extension beyond completion of the Lincoln Avenue Bridge Project, the Parties may negotiate a new lease agreement.

3. RENT.

3.1 Rent. Payments of Rent under this Lease shall commence as of the Commencement Date. Tenant shall pay to Landlord, at the following address: 3468 HWY 128, Calistoga, CA 94515, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, annual rent in the amount of one dollar (\$1.00), in advance, on the first day of each calendar year. Tenant's obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term.

4. INSURANCE.

4.1 Tenant. Tenant shall, at Tenant's expense, maintain commercial general liability and property insurance or an insurance equivalent (including but not limited to that offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500 or similar collective) insuring against liability and personal property damage. Tenant may also carry such other insurance as Tenant may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine.

5. REPAIRS AND MAINTENANCE.

5.1 Tenant's Obligations. Tenant, at Tenant's expense, shall maintain the parking lot portion of the Property, not the building, in good condition and repair. Tenant shall make any required repairs in an expeditious manner should the need for such repairs arise.

5.2 As-Is Conveyance. Tenant specifically acknowledges and agrees that Tenant is leasing the property on an "as is with all faults" basis, condition and state of repair inclusive of all faults and defects, whether known or unknown, as may exist as of the Effective Date, including the environmental condition ("As Is Condition") and that, except as expressly set forth herein, Tenant is not relying on any representations or warranties from Landlord as to matters concerning the Property.

6. USE.

6.1 Usage. The Property shall be used only for public parking within the developed parking lot area behind the existing building. Tenant's execution of this Lease and entry of the Property hereunder shall establish that the foregoing were at such time in satisfactory condition.

7. ENVIRONMENTAL MATTERS.

7.1 Environmental Compliance. Both Landlord and Tenant shall, at their sole cost and expense, comply with all Federal, State or local laws from time to time in effect ("**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes ("**Hazardous Materials**"). Except for materials normally and customarily used in offices, such as cleaning supplies, kept in small quantities and safely stored, neither Tenant nor Landlord nor their agents, employees, contractors, sublessees, assignees or invitees shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the Property or any portion thereof. Tenant and Landlord shall cause any and all Hazardous Materials brought onto, used, generated, stored or discharged in the Property to be removed from the Property and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Property from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazardous Materials Laws. Tenant shall immediately notify Landlord in writing of any voluntary clean-up or removal action instituted or proposed by Tenant, any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or any claim made or threatened by

any person against Tenant, the Property relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Property or Tenant's use thereof and concerning Hazardous Materials or Hazardous Materials Laws.

7.2 Mutual Indemnification. Each party shall indemnify, defend and hold the other harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in or about the Property, including, without limitation, any bodily injury, death, property damage, decrease in value of the Property caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials in violation of each party's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against the other party with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials.

8. DEFAULT.

8.1 Events of Default. Where “**default**” is used in this Lease, default refers to any breach under this Lease, however brief. Where a default continues for the period specified below, it shall, at the other party's option, constitute an Event of Default giving rise to the remedies set below. The occurrence of any of the following events may constitute an “**Event of Default:**”

8.1.1 Tenant's failure to pay Rent on the date when due and the failure continuing for a period of 15 days after such payment is due; or

8.1.2 Either party's failure to perform its covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of 30 days.

8.2 Remedies.

8.2.1 Termination. In the event of the occurrence of any Event of Default, the party claiming default shall have the right to give a written termination notice to the other party and, on the date specified in such notice (which date shall be at least two business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and/or all other Events of Default at the time existing shall have been fully remedied to the satisfaction of the non-defaulting party.

A. Repossession. Following termination by Landlord, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Property upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Property, using such legal proceedings as may be available; (ii) repossess the

Property or re-let the Property or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Property; and (iii) remove all personal property therefrom.

B. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (c) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

9. ASSIGNMENT AND SUBLETTING.

Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Property or any part thereof, without Landlord's prior written approval, which may be granted in Landlord's reasonable discretion. Any sublease or assignment or other transfer agreements shall be subject to Landlord's prior written approval, which may be granted in Landlord's reasonable discretion. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed consent to subsequent assignments and/or sublets. This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void at Landlord's election and shall constitute an Event of Default hereunder.

10. MISCELLANEOUS.

10.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property and there are no agreements either oral or written other than as set forth herein.

10.2 Time of Essence. Time is of the essence of this Lease.

10.3 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

10.4 Law. This Lease shall be construed and enforced in accordance with the law of the state of California, without reference to its choice of law provisions.

10.5 Successors and Assigns. Subject to the assignment provisions herein, this Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant.

10.6 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

10.7 Memorandum of Lease; Title. Tenant may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Landlord shall cooperate with Tenant in executing and acknowledging any such memorandum of lease.

10.8 Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

10.9 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

10.10 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

10.11 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to the address below, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

LANDLORD: Calistoga Ventures, LLC
c/o David Jackson
3468 HWY 128
Calistoga, CA 94515

TENANT: Attn: Dylan Feik, City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

10.12 Brokerage Commission. Each party hereby represents and warrants that it has not obtained the services of a broker in connection with this Lease.

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

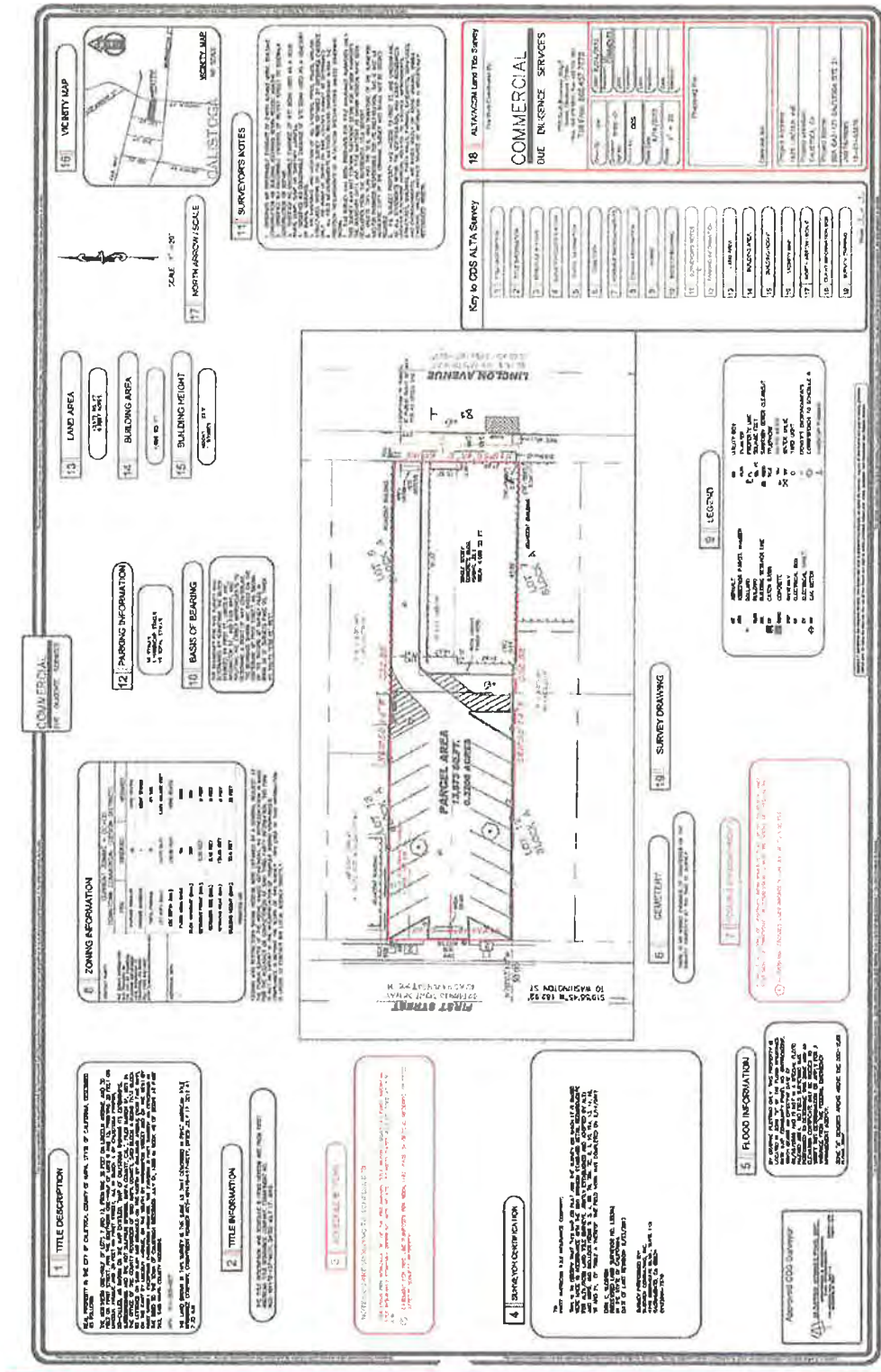
Real property in the City of Calistoga, County of Napa, State of California, described as follows:

THE NORTHERN ONE-HALF OF LOTS 7 AND 12, FRONTING 30 FEET ON LINCOLN AVENUE AND 30 FEET ON FIRST STREET, AND THE SOUTHERN ONE-HALF OF LOTS 6 AND 13, FRONTING 30 FEET ON LINCOLN AVENUE AND 30 FEET ON FIRST STREET, ALL IN BLOCK A OF CALISTOGA PROPERT, SO-CALLED, AS SHOWN ON THE MAP ENTITLED, "MAP OF CALISTOGA SHOWING ITS EXENSIONS, SURROUNDINGS AND THE HOT SULPHUR SPRINGS, NAPA COUNTY, CAL.", FILED MARCH 01, 1871 IN THE OFFICE OF THE COUNTY RECORDER OF SAID NAPA COUNTY, SAID BLOCK A BEING THAT BLOCK SO LETTERED ON SAID MAP AND BOUNDED ON THE NORTH BY RAILROAD AVENUE (NOW FAIR WAY), ON THE EAST BY LINCOLN AVENUE, ON THE SOUTH BY WASHINGTON STREET AND ON THE WEST BY FIRST STREET.

EXCEPTING THEREFROM HOWEVER, THE EASTERN 8 FEET THEREOF AS DESCRIBED IN THE DEED TO THE TOWN OF CALISTOGA RECORDED JULY 01, 1889 IN BOOK 45 OF DEEDS AT PAGE 242, SAID NAPA COUNTY RECORDS.

APN: 011-205-007

DEPICTION OF THE PROPERTY




10.13 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

10.14 Surrender. Upon the termination of this Lease or Tenant's right to possession of the Property, Tenant will surrender the Property, together with all keys, in good condition and repair, reasonable wear and tear excepted.

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

LANDLORD:

By: 
Name: DAVID JACKSON
Its: _____

By: _____
Name: _____
Its: _____

TENANT:

CITY OF CALISTOGA, a municipal corporation

By: 
Name: Dylan Feik
Its: City Manager

Approved as to Form:

By: _____
City Attorney

PROFESSIONAL SERVICES AGREEMENT

Environmental Review Services for the Shell Gas Station Project

Authorizing Agreement No. 746

THIS AGREEMENT is entered into as of the 27th day of November, 2017 by and between the City of Calistoga, herein called the "City", and Metropolitan Planning Group (M-Group), herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain environmental review services in connection with the Shell Gas Station Project (Use Permit UP 2017-11, Design Review DR 2017-13); and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

It is acknowledged that a contingency study (Task 4.4) may be required if project-specific screening suggests that toxic organize emissions could potentially exceed thresholds that would potentially expose nearby residents to elevated health risks. This work shall not be undertaken without the prior written approval by the Planning & Building Director or their designee.

2. Time of Performance. Tasks 1 through 6 as described in Exhibit "A" are to be completed by the Consultant not later than twenty-one (21) weeks from the effective date of this agreement. Any changes to these dates must be approved in writing by the Planning & Building Director or their designee.

3. Compensation and Method of Payment.

- A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". In no event shall the amount exceed Sixty-Two Thousand Eight Hundred Thirty-Five Dollars (\$62,835.00).

Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

- B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

- C. Changes in Compensation. If the contingency study (Task 4.4) is required, the compensation to be paid to Consultant shall not exceed Seventy-One Thousand Seven Hundred Forty-Five Dollars (\$71,745).
 - D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.
4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.
5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services, except as otherwise included in the Scope of Work, without the prior written approval of the City.
6. Interest of Consultant.
- A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and
- (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.
8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.
9. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
10. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.
11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.
12. Compliance with Laws.
 - A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

- B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.
 - C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.
 - D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.
13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
14. Insurance.
- A. Minimum Scope of Insurance.
 - (1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.
 - (2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.
 - (3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.
 - (4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:
 - (a) This policy shall provide coverage for Workers' Compensation (Coverage A).
 - (b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

- (c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.
- (5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:
 - (a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."
 - (b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."
 - (c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
- (6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

- (1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- (2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best's rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option,

Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

15. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.
16. Termination of Agreement.
 - A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.
 - B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.
 - C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.
 - D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.
17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.
18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.
19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.
20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Of Calistoga
 City Manager
 1232 Washington Street
 Calistoga, CA 94515

If to Consultant: Metropolitan Planning Group
 499 Humboldt Street
 Santa Rosa, CA 95404

21. Consultant's Books and Records.

- A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
- D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

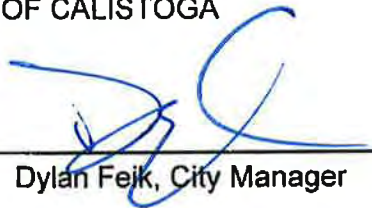
22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.


23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
25. News Releases/Interviews: All Consultant and sub-consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.
26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

METROPOLITAN PLANNING GROUP

By: 
Heather Hines, Principal

ATTEST


Kathy Flamson, City Clerk

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.


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CITY OF CALISTOGA

METROPOLITAN PLANNING GROUP

By: _____
Dylan Feik, City Manager

By: _____
Heather Hines, Principal

ATTEST

Kathy Flamson, City Clerk

AUTHORIZING AGREEMENT No. 746 EXHIBIT "A"

M-Group Proposal for 2449 Foothill Boulevard
November 4, 2017

SCOPE OF WORK

The following describes M-Group's scope of work for the subject project.

TASK 1: PROJECT MANAGEMENT + KICK-OFF MEETING

Our team will be available throughout the preparation of environmental documentation to correspond with City staff, gather information, and address any concerns. Olivia Ervin will serve as the Project Manager and the primary point of contact. She will provide routine updates on progress and oversee coordination of the environmental team. This task includes one kick-off meeting with City staff to finalize the scope, schedule and budget as well as routine progress reports and ongoing correspondence.

Task 1 Deliverables: *Kick-off meeting and a finalized project scope, schedule, and budget; bi-weekly status updates (via email or conference call) to keep the City informed of project progress.*

TASK 2: BACKGROUND RESEARCH/SITE VISIT

M-Group will conduct a site visit to document existing conditions and will fully review all available information on the project site and vicinity including a records search of relevant documents, the site history, and applicable regulations.

Task 2 Deliverable: *Memorandum outlining additional information or data needed to fill in any identified gaps, if applicable.*

TASK 3: PROJECT DESCRIPTION

M-Group will prepare a CEQA compliant project description and coordinate with the City of Calistoga to confirm adequate scope and detail. The project description will clearly identify the proposed project and will include background and site history information, environmental and regulatory conditions, location graphics, and other pertinent project details. Prior to proceeding with the environmental analysis, M-Group will secure confirmation that the project description has been completed to the City's satisfaction.

Task 3 Deliverable: *Electronic version of the Administrative Draft Project Description.*

TASK 4: ADMIN DRAFT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

M-Group will prepare an Administrative Draft Initial Study/Mitigated Negative Declaration, which will include the following:

- Introduction with graphics and detailed project description
- Environmental Setting
- Environmental Impacts
- Mitigation Measures
- Cumulative Impacts Analysis
- References

The environmental setting will characterize the existing site conditions including the regulatory context to define the baseline conditions. The environmental impacts discussion will analyze the net change onsite relative to baseline conditions. Standard methodologies will be utilized for each environmental category. An overview of our scope of work for each environmental category that involves a special study is presented below:

Air Quality Health Risk Assessment (Contingency)

M-Group will complete the following tasks to inform the Air Quality and GHG analysis:

- Provide a summary of the BAAQMD screening methodology for criteria pollutants and GHG emissions
- Complete a consistency evaluation with the 2017 Clean Air Plan and the City's Climate Action Planning effort, if applicable
- Identify BAAQMD best management practices to minimize construction emissions
- Develop mitigation measures to minimize construction and operational emissions (as warranted)

As a contingency item, Illingworth & Rodkin (I&R) will prepare an Air Quality, GHG and Health Risk Assessment. Because the proposed gas station, as a source emitter, is located in close proximity to sensitive receptors (single-family residences), nearby residents could potentially be exposed to elevated health risks due to diesel particulate matter and other toxic organic compounds (TOC). In the event that project specific screening using BAAQMD criteria suggests that emissions could potentially exceed thresholds, then Illingworth & Rodkin would perform a qualitative assessment of Health Risks that would be used support the environmental analysis.

Cultural and Tribal Resources

Given the site location in close proximity to known cultural resources, there is an elevated potential that buried cultural resources may be present onsite. As such, Evans & De Shazo will complete a Cultural Resources Evaluation. M-Group will complete the following tasks to inform the Cultural Resources analysis:

- Evans & De Shazo will complete a Culture Resources Study
- Visual inspection of Project Area including up to 3 exploratory hand augurs
- Submit a Sacred Lands File Search request
- Assist the City in carrying out notification and if requested consultation under AB 52
- Incorporate a Tribal Cultural Resources category as part of the Initial Study Checklist
- Identify likelihood of encountering buried resources onsite and develop mitigation measure in the event that resources are unearthed

Noise Evaluation

The project site is located near existing residences that could be affected by project construction noise and vibration, as well as project operational noise particularly from the proposed carwash dryers. Noise levels onsite are likely to be elevated under the proposed project relative to existing conditions and may affect adjacent residences with a shared property line.

The primary noise issues associated with the project would be the compatibility of the project with respect to the ambient noise environment, project-generated noise at nearby noise sensitive receivers, and noise and vibration associated with project construction and operation. Illingworth & Rodkin would complete the following tasks in the noise evaluation:

- **Quantify Existing Ambient Noise Levels.** The existing noise environment will be quantified through a noise monitoring survey. Noise levels would be measured over a continuous 24-hour period at up to two locations to quantify ambient noise levels. Short-term noise measurements would be made as necessary over periods of 10 to 15-minutes.
- **Calculate Future Noise Levels at Proposed Uses.** Based on the results of the noise measurements, future traffic volume projections, and an analysis of the project site plan, noise levels would be calculated at noise sensitive receivers proposed at the project site.
- **Calculate Construction Noise Levels.** Noise and vibration generated by construction of the project would be estimated at nearby uses.
- **Calculate Project Operational Noise Levels.** Project-generated noise levels that could affect existing noise sensitive uses would be computed. This would include calculations of traffic noise increases based on the project's traffic study, noise from the project's mechanical system, activity at the proposed restaurant, the carwash and associated air dryer and other features of the project.
- **Assess Noise Impacts.** Based on these calculations, the significance of noise impacts would be evaluated against the CEQA checklist questions. The future noise environment on the project site will be evaluated with respect to the noise standards established by the City of Calistoga. The compatibility of the project with noise sources in the area would be evaluated against City policy. Project-generated noise impacts such as project traffic and construction noise would be assessed to determine any adverse impacts to existing or planned uses.
- **Develop Mitigation Measures.** If calculated noise levels exceed the levels established by the regulatory criteria, measures would be recommended include project design features to meet acceptable standards. These measures may include noise barriers and sound insulation treatments such as sound-rated windows and doors. A general range of noise control treatments, including a range of Sound Transmission Class (STC) ratings for building elements, would be established at this time. Measures would also be identified to reduce off-site impacts attributable to project construction or operations to less-than-significant levels.

Traffic and Circulation

The project site is located at the northwestern corner of the Foothill Blvd/Petrified Forest Road intersection. M-Group will complete the following tasks to inform the Traffic and Circulation analysis:

- W-Trans will prepare a Traffic Study, identify the trip generation rate and evaluate two study area intersections: 1) Foothill Blvd/Petrified Forest Road; and 2) Foothill Blvd/Lincoln Avenue (SR 29). See Attachment A for W-Trans' detailed scope of work.
- Existing conditions and a future operating conditions will be assessed
- Project site access and turning movements and adequacy of facilities for pedestrian, bicyclists and transit users will be evaluated
- Integrate Traffic Study findings and recommendations into environmental analysis

Summary

M-Group will prepare a comprehensive Administrative Draft IS/MND that meets the provisions of CEQA including technical studies for the categories as detailed above. The discussion will provide a characterization of the existing physical and regulatory setting, and an analysis of potential environmental impacts. Mitigation measures will be developed to reduce identified impacts to levels below significance. M-Group will provide the City with an Administrative Draft of the IS/MND for review and comment.

Task 4 Deliverables: *Electronic file of the assembled Administrative Draft IS/MND including graphics, tables, and a list of references. Technical studies will be included as attachments to the Admin Draft IS/MND. A word version of the Admin Draft IS/MND will be provided to the City electronically. Hardcopies of the Admin Draft can be provided upon request.*

TASK 5: PUBLIC DRAFT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

M-Group will coordinate with the City to address all comments on the Administrative Draft IS/MND. Once the City's comments on the Administrative Draft have been fully addressed, M-Group will prepare the Public Review IS/MND and Mitigation Monitoring and Reporting Program (MMRP) and coordinate with the City for its release and distribution. The public review period for the IS/MND is presumed to be 30 days.

In coordination with the City, M-Group will develop the project mailing list and distribute notices and the environmental document to interested parties, state agencies and stakeholders. It is assumed that M-Group will mail the IS/MND to the State Clearinghouse (SCH) and that the City will make copies of the IS/MND available to property owners in accordance with standard local noticing procedures.

Task 5 Deliverables: *Electronic files (word and pdf) containing all work product, technical studies and reference documents; Public Draft IS/MND SCH Submittal Packet; and 10 hardcopies of the Public Draft IS/MND and MMRP for City use. A copy of the Notice of Completion and confirmation of delivery to the SCH will also be provided to the City.*

TASK 6: FINAL INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

Following close of the public comment period on the Draft IS/MND, M-Group will respond to any and all comments received. Depending on the number and breadth of comments, M-Group will prepare either a master response or itemized response to comments. This, along with any changes to the Draft IS/MND will constitute the Final IS/MND. This scope assumes five (5) comment letters of normal detail (2-3 pages in length). Comments in excess of these assumptions will be considered outside of this scope of work and cost estimate and will be

charged on an hourly basis. This scope assumes that no new technical analyses or fieldwork would be required in order to respond to comments.

M-Group will provide an Administrative Final IS/MND and Draft Notices for review and comment prior to public release. Once the Administrative Final IS/MND has been completed, M-Group will develop the Public Final IS/MND for release and circulation.

Task 6 Deliverables: *Electronic versions (word and pdf) of the response to comments document, electronic file containing all comment letters, and any additional references cited; and 5 hardcopies of the of the Final IS/MND for City use.*

TASK 7: PUBLIC MEETING/NOD

Attendance at one public meeting is included as part of this scope of work. Based on required approvals, the City's Planning Commission is expected to be the decision-making body. Additional public meetings would be charged on an hourly basis as needed. M-Group will assist City staff with CEQA related presentations items and staff report language (as warranted) and will be available to answer any questions raised by decision makers and respond to public comment. It is assumed that City staff will prepare staff reports and present the project at public hearings.

Following adoption of the Final IS/MND, M-Group will assist the City in preparing and filing a Notice of Determination. A County Clerk fee of \$50 and a Fish and Wildlife filing fee of \$2,280.75 will be required for filing within 5 days of certification (fee subject to change). A copy of the NOD will also be sent to the SCH as appropriate.

Task 7 Deliverables: *Environmental materials to support staff reports and public hearings; Copy of the Notice of Determination and Receipt from County Clerk and State Clearinghouse.*

COST PROPOSAL

Based on our knowledge of the project and the expectation that an Initial Study/MND will be prepared, we anticipate a budget of \$62,835 and a not to exceed budget of \$71,745 (inclusive of all environmental review tasks, completion of technical studies and contingency studies, printing and mailing costs, and a 10% contingency). Our cost proposal excludes the Fish and Wildlife filing fee required for filing the NOD with the County clerk. Unexpected delays or high levels of controversy and public comments will result in a cost increase and would need to be addressed at the appropriate time. Our detailed cost proposal is provided below.



Calistoga LOOP Gas Station Project - Initial Study/MND

Task	Hourly Rate	Principal-in-Charge	Project Manager	Environmental Planner	Assistant Planner	Subtotal
1	Project Management	2	18	0	0	\$3,190
2	Background Research + Site Visit	0	2	6	6	\$1,690
3	Project Description	2	6	8	8	\$3,170
4	Administrative Draft: IS/MND					
	Aesthetics	0	0	4	0	\$560
	Agriculture & Forestry Resources	0	0	0	1	\$90
	Air Quality	0	4	6	4	\$1,820
	Biological Resources	0	0	2	2	\$460
	Cultural Resources	0	4	4	0	\$1,180
	Geology and Seismicity	0	0	2	0	\$280
	Greenhouse Gas Emissions	0	0	2	2	\$460
	Hazards & Hazardous Materials	0	0	2	4	\$640
	Hydrology & Water Quality	0	2	2	0	\$590
	Land Use & Planning	0	0	2	0	\$280
	Mineral Resources	0	0	0	1	\$90
	Noise	0	4	6	0	\$1,460
	Population & Housing	0	0	0	1	\$90
	Public Services	0	0	2	2	\$460
	Recreation	0	0	0	1	\$90
	Tribal Cultural Resources	0	2	4	0	\$870
	Transportation and Traffic	0	8	6	2	\$2,260
	Utilities & Service Systems	0	0	2	4	\$640
	Mandatory Findings of Significance and Cumulative Analysis	0	0	4	0	\$560
	Mitigation Monitoring and Reporting Program	0	2	2	4	\$950
	Internal Q/A and Q/C Review	4	8	0	0	\$2,040
5	Public Review Draft IS/MND	0	6	6	10	\$2,670
6	Administrative and Final IS/MND	2	8	8	4	\$3,120
7	One Public Hearing + NOD	0	6	0	2	\$1,110
	SUBTOTAL:	10	80	80	58	\$30,820
	TECHNICAL STUDIES					
4.1	Noise Assessment (Illingworth & Rodkin)					\$5,500
4.2	Traffic Study (W-Trans)					\$16,800
4.3	Cultural Resources Evaluation (Evans & De Shazo)					\$3,000
	M-Group Administrative Fee 10%					\$2,530
	SUBTOTAL:					\$27,830
	CONTINGENCY STUDY					
4.4	Air Quality GHG and Health Risk Assessment (Illingworth & Rodkin)					\$8,100
	M-Group Administrative Fee 10%					\$810
	SUBTOTAL:					\$8,910
	Printing and Mailing Costs					
10%	Contingency (of M-Group tasks only)					\$1,000
	TOTAL WITHOUT CONTINGENCY STUDY:					\$62,835
	GRAND TOTAL:					\$71,745
1	M-Group assumes that an IS/MND is the appropriate CEQA document. If an EIR is warranted, a scope and budget amendment will be required.					
2	The consultant reserves the right to re-allocate hours and task completion as necessary but within the total budget.					
3	Cost Proposal is for a Not-to-exceed Contract with monthly invoicing based on percentage of task completed.					
4	Contingency items may be required based on screening and consultation with regulatory agencies.					
5	Travel time and expenses for planning services have been factored into the budget.					
6	This cost proposal assumes attendance at one public hearing. If additional hearings are necessary, attendance will be charged on a time and materials basis.					
7	Unexpected delays or high levels of controversy or excessive response to comments on draft document will result in a cost increase.					

Date: November 4, 2017

PROJECT SCHEDULE

The following project schedule presumes a start date in November and anticipates completion by March 2018. At project kickoff, specific target dates will be established in close coordination with City staff to identify calendar dates for deliverables and reasonable response times.

Task	Target Date
1. Project Management + Kick-off Meeting	
Project Management and Team Coordination <ul style="list-style-type: none"> Kick-off Meeting/ Confirm Scope Progress Reports Additional Team Meetings 	Ongoing <ul style="list-style-type: none"> Week 1 Bi-weekly via email/phone As needed
2. Background Research/ Site Visit	
<ul style="list-style-type: none"> Complete Background Research Data Needs Memo Response from City 	<ul style="list-style-type: none"> Week 2 Week 2 TBD
3. Project Description	
<ul style="list-style-type: none"> Admin Draft Project Description City Review Finalize project description 	<ul style="list-style-type: none"> Week 3 Week 4 Week 5
4. Admin Draft IS/MND	
<ul style="list-style-type: none"> Technical Studies Administrative Draft IS/MND City Review 	<ul style="list-style-type: none"> Week 8 Week 10 Week 12
5. Public Draft IS/MND	
<ul style="list-style-type: none"> Release Public Draft IS/MND Close of Comment Period (Assumes 30 Days) 	<ul style="list-style-type: none"> Week 14 Week 18
6. Final IS/MND	
<ul style="list-style-type: none"> Prepare Draft Response to Comments City Review of Draft Responses to Comments Prepare Final IS/MND 	<ul style="list-style-type: none"> Week 19 Week 20 Week 21
7. Public Meeting	
Planning Commission Meeting	Week 22
File the NOD	Within 5 days of approval

PROJECT ASSUMPTIONS

1. M-Group assumes that an IS/MND is the appropriate CEQA document. However, in the event that the analysis demonstrates that an EIR is warranted, a scope and budget amendment will be required.
2. M-Group will coordinate with the City to ensure that any records and past reports relevant to the project area including previous environmental review documents and any technical reports, etc., are obtained and referenced.
3. This scope of work assumes that no new technical studies will be required. If during the course of analysis further technical reports are needed, a budget adjustment will be required.
4. City staff will assemble and provide all comments received during the public comment period.
5. City staff will provide all administrative review comments in one consolidated document.
6. M-Group will assist the City in developing a mailing list and distributing the public draft of the Initial Study/MND to appropriate parties, stakeholders and relevant public agencies.
7. Unexpected delays may result in a cost increase and would need to be addressed at the appropriate time.
8. Should services be requested beyond 90-days of the date of this proposal, M-Group reserves the right to reassess scope, budget and timeline.

PROFESSIONAL SERVICES AGREEMENT

Landscape Architectural Services for the Oat Hill Mine Trail Facilities Project

Authorizing Agreement No. 747

THIS AGREEMENT is entered into as of the 12th day of December, 2017 by and between the City of Calistoga, herein called the "City," and GSM Landscape Architects, Inc. (GSM), herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain landscape architectural services in connection with development of the City-owned parcel at the corner of Silverado Trail and Lincoln Avenue/SR 29 as a gateway entrance to the City and trailhead facility for the Oat Hill Mine Trail; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A," dated December 7, 2017, and incorporated herein by reference.
2. Time of Performance. The work described in Exhibit "A" are to be completed by the Consultant not later than nine (9) months from the effective date of this agreement. Any changes to these dates must be approved in writing by the Planning & Building Director or their designee.
3. Compensation and Method of Payment.

- A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". In no event shall the amount exceed Twenty-Five Thousand Dollars (\$25,000.00) without approval in writing by the Planning & Building Director or their designee.

Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

- B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.
- D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will

compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.
5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services, except as otherwise included in the Scope of Work, without the prior written approval of the City.
6. Interest of Consultant.
 - A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

 - (1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and
 - (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)
7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any

corporation, partnership or association in which he/she is directly or indirectly interested.

8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.
9. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
10. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.
11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.
12. Compliance with Laws.
 - A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.
 - B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

- C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.
 - D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.
13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
14. Insurance.
- A. Minimum Scope of Insurance.
 - (1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.
 - (2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.
 - (3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.
 - (4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:
 - (a) This policy shall provide coverage for Workers' Compensation (Coverage A).
 - (b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).
 - (c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.
 - (5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and

Workers' Compensation and Employers' Liability policies, as stipulated below:

- (a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."
- (b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."
- (c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
- (6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

- (1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- (2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best's rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

15. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

16. Termination of Agreement.

- A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.
 - B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.
 - C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.
 - D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.
17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.
18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.
19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.
20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: Gretchen Stranzl McCann
1700 Soscol Ave., Suite 23
Napa, CA 94559

21. Consultant's Books and Records.

- A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
- D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
25. News Releases/Interviews: All Consultant and sub-consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.
26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

GSM LANDSCAPE ARCHITECTS, INC.

By: _____


Dylan Feik, City Manager

By: _____


Gretchen Stranzl McCann, President

ATTEST

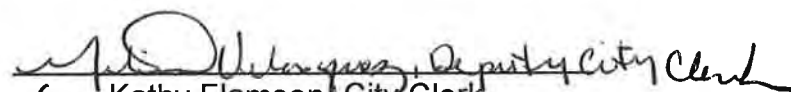

Kathy Flamson, City Clerk

Exhibit "A"



**landscape
architects, inc.**

December 7, 2017

Ms. Lynn Goldberg
Planning Director
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

RE: Proposal of Landscape Architectural Services for:
City of Calistoga Oat Hill Mine Trail Facilities Project

Dear Lynn:

We very much appreciate the opportunity to provide landscape architectural services for City of Calistoga Oat Hill Mine Trail Facilities Project. The following is our revised proposal of work based upon comments and feedback received by the City.

PROJECT GOALS AND FEATURES

The City of Calistoga would like to develop the City-owned parcel at the corner of Silverado Trail and Lincoln Ave./SR 29 as a gateway entrance to the City and trailhead facility for the Oat Hill Mine Trail. The City would like to include some of the "Silverado Trail Gateway" planned elements from the City's 2010 Urban Design Plan. Additionally, planning of design features will need to interface with Napa Valley Vine Trail Coalition's trail development plans in Calistoga, Cal Trans, and owners of the Calistoga Motor Lodge and Calistoga Congregation of Jehovah's Witnesses. The new parking lot will be accessed from Lincoln Avenue via an existing curb cut and driveway presently located on the Calistoga Motor Lodge property, directly south of the City's parcel. This entrance will require improvement, including new curb cuts, widening and access easement. The City also wishes to explore options of connecting the new parking lot to the Calistoga Congregation of Jehovah's Witnesses parking lot, directly east of the project site.

GSM landscape architects, inc. work scope will focus on initial concept planning and landscape master plan for the project. Site features anticipated include:

- Pedestrian and bicycle connections to future Napa Valley Vine Trail, downtown Calistoga and Oat Hill Mine Trail.
- Staging for the Napa Valley Vine Trail and Oat Hill Mine Trail
- Accessible pathways from the parking area to the restroom building, plaza and trails.
- Parking lot, with focus on a non-asphalt, permeable surface to slow, spread and sink storm drainage run off, and which reflects the rural character of the area.
- EV charging station.
- Restroom building ("stick built" or "pre-manufactured") in an easily accessible, and non-visually prominent location.
- Small scale pedestrian gathering area with shade cover.
- Site furnishings including bicycle racks, drinking fountain with bottle filler, benches, picnic tables, trash and recycling containers.

- City Landmark Sign.
- Area for Vine Trail and Open Space/Oat Hill Mine Trail Maps and Information
- Use of solar and alternative power sources.
- Safety lighting
- Landscape screening from off-site views, Shade trees and water efficient, low maintenance plantings.
- Protection of existing drainage channel and "wet" areas.

SCOPE OF SERVICES

GSM will prepare schematic design options and a landscape master plan for the project. Our schematic design and landscape master plan will incorporate all elements as described in project goals and features above. The following outlines our intended scope of services.

• **Project Stakeholders**

- ✓ GSM will meet with City staff and key stakeholders for a kick-off meeting to identify needs, constraints and opportunities. This may include a series of meetings.
- ✓ Stakeholders may include City staff, Caltrans representatives, California State Department of Fish and Wildlife representatives, Napa County Regional Park and Open Space District representatives, Napa Vine Trail Coalition representatives, and adjacent property owners.
- ✓ The City will determine a final list of stakeholders.

• **Schematic Design and Landscape Master Plan**

- ✓ We will develop 2-3 schematic design plan options based upon staff and stakeholder input, and information gathered from the project kick-off meeting(s).
- ✓ These plans will be presented to City staff for review and input and then at a public design meeting to gain feedback from key project stakeholders.
- ✓ GSM will provide electronic plans and materials to the City, for their posting on the City's website, to gather additional public input on the schematic design options developed.
- ✓ After comment period, City staff will decide on a direction for GSM's development of a landscape master plan.
- ✓ We will create a final landscape master plan based upon comments received from the City and key stakeholders. The landscape master plan will include a more detailed effort of design and layout of proposed site elements.
- ✓ Our design will reflect on-site mitigation for new hardscape elements, and no-post construction increase in run-off.
- ✓ The landscape master plan will be presented to City staff and key stakeholders for review and comment.
- ✓ After landscape master plan comments have been received by City staff and key stakeholders, we will develop an opinion of probable costs and color rendered final landscape master plan.
- ✓ This package will be presented to City Council for final review and adoption.

Tasks include:

- a) Develop base map of the area using google maps, survey provided by the City and other information from the City.
- b) Review applicable City ordinances, policy documents and plans.
- c) Conduct initial kick-off meeting with City staff and key stakeholders.
- d) Walk the site to analyze opportunities and constraints and take photographic survey.
- e) Create 2-3 schematic design plans. Plans will be prepared to scale and will include sketches, materials palettes, photographs and notes.
- f) Meet with City staff to review schematic design options.
- g) Meet with key stakeholders to review schematic design options.

- h) Prepare landscape master plan based upon feedback and design direction from schematic design work.
- i) Present landscape master plan to City staff and key stakeholders.
- j) Prepare opinion of probable costs and color rendered final master plan.
- k) Present plan to City Council.

DELIVERABLES:

- One (1) base map of area
- Two - Three (2-3) options of schematic design plan
- Electronic version graphics of schematic design plans for City website posting
- One (1) landscape master plan
- One (1) estimate of probable costs
- One (1) final color rendered landscape master plan

MEETINGS AND OUTREACH

- One (1) kick-off meeting with City staff and key stakeholders
- One (1) schematic design options presentation to City staff
- One (1) schematic design options presentation to key stakeholders
- One (1) landscape master plan presentation to City staff and key stakeholders
- One (1) meeting with City Council
- Ongoing coordination with City staff

PROJECT ASSUMPTIONS AND EXCLUSIONS

- City will provide GSM all electronic and hard copy topographic map for neighboring properties, including Kingdom Hall and Calistoga Motor Lodge. Final work by GSM may utilize Google aerial images and detailed accuracy cannot be guaranteed. We are happy to provide a proposal for topographic surveying for the site, if requested by the City.
- City will provide GSM information on existing easements, utilities, land use and other site restrictions
- Arborist and wetlands analysis, if required, will be provided by others.
- Meeting notification, staff reports and distribution of documents for meetings will be prepared by others.
- City will post plans to website, create surveys if needed, and collect and review comments.
- Traffic engineering and detailed intersection design is not included in this scope of work.
- Construction plans, specifications and engineering work is not included in this scope of work.
- Signage design will include general information and locations for project.
- Project CEQA review, environmental, cultural, and historical resources surveys, studies, mitigation, notices of intent, and associated documentation and processing, if required, will be provided by others.
- Project will be designed based upon requirements of current California Building Code, California Code of Regulations, Title 24, comply with ADA requirements and California Model Water Efficient Landscape Ordinance.

ASSOCIATED FEE

- Schematic Design and Landscape Master Plan \$24,500
- Limited expenses such as mileage, deliveries, plotting and printing will be billed with monthly invoices.
- Additional work as required due to change in program scope, design or project direction will be billed on a time and materials basis, presented to and approved by the City before the work is completed.

In Agreement:


 Gretchen Stranzl McCann, President
 GSM landscape architects, inc. 12/7/17 Date

Dylan Feik, City Manager
 City of Calistoga Date

Landscape Architects are licensed by the State of California



PROFESSIONAL RATE OF SERVICES

2017 - 2018

HOURLY RATE SCHEDULE

Principal Landscape Architect	\$160/hour
Staff Landscape Architect/Senior Project Manager	\$125/hour
Project Manager	\$110/hour
Graphic Specialist	\$100/hour
Landscape Designer	\$90/hour
Technical Draftsperson/CAD	\$75/hour
Assistant Technical Draftsperson/CAD	\$60/hour
Administration	\$55/hour

REIMBURSABLE EXPENSES

Photocopies – each	B&W	8 ½" x 11"	\$.10
		11" x 17"	\$.15
	Color	8 ½" x 11"	\$ 1.25
		11" x 17"	\$ 3.00
Reproduction – outside		Cost + 15%	
Plotting – in-house	B&W	24" x 36"	\$10.00
		30" x 42"	\$15.00
		36" x 48"	\$20.00
	Color	24" x 36"	\$20.00
		30" x 42"	\$25.00
		36" x 48"	\$30.00
	Vellum	24" x 36"	\$13.00
Postage/Delivery Service		Cost + 15%	
Mileage		58¢/mile	
Travel/Miscellaneous Expenses		Cost + 15%	

IMPACT FEE PAYMENT AGREEMENT

This IMPACT FEE PAYMENT AGREEMENT (“**Agreement**”) is entered into as of November 30, 2017, by and between Dan Farris, (“**Developer**”) and CITY OF CALISTOGA, a municipal corporation (“**City**”).

RECITALS

A. Developer owns that certain real property located at 713 A/B and 715 Washington Street, Calistoga and identified as Napa County Assessor’s Parcel Number 011-234-012 (“**Property**”). Developer expanded the development on the Property without first obtaining the required permits and approvals from the City. On or about June 2017, Developer obtained the required approvals and permits to expand the existing development on the Property (“**Project**”).

B. As a result of the Project, Developer incurred a total of \$6,531.60 in Transportation Impact Fees and \$2,087.12 in Cultural/Recreation Impact Fees pursuant to the Chapter 3.28 of the Calistoga Municipal Code (“**Impact Fees**”). The total amount in impact fees is \$8,618.72.

C. City and Developer desire to set forth the terms and provisions of the payment of the Impact Fees.

D. On October 8th, 2017, the Tubbs Fire began near Calistoga and devastated many properties adjacent to the City of Calistoga which displaced members of the community due to fire damage.

E. City and Developer desire to set forth the terms and provisions of the payment of the Impact Fees which expedite new housing opportunities for displaced persons.

NOW, THEREFORE, for good and valuable consideration, Developer and City agree as follows:

Section 1. Impact Fee Payment

Developer will pay City an amount equal to \$8,618.72. Developer will pay this amount in six (6) equal monthly installment payment of approximately \$1,436, starting on December 15, 2017 and ending on May 15, 2018. All payments must be made no later than the 20th day of each month during the term of this Agreement.

Section 2. Indemnification

Developer hereby indemnifies and holds the City harmless from all demands, claims, actions and damages to any person or property brought by any party arising out of this Agreement.

Section 3. Default

Failure by a Developer to perform its obligations hereunder will constitute a default under this Agreement. In the event of default by the Developer, City may take any and all action available to it under the law to recover the amount owed, including, but not limited to seeking payment through collections. In the event of default by the Developer, City will be entitled to recover from Developer all costs and fees, including attorneys' fees, incurred by the City as part of its efforts to collect the amount owed by Developer.

Section 4. Miscellaneous Provisions

a. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without reference to choice of laws principles. Any action to enforce the terms and provision of this agreement must be filed in the County of Napa.

b. **Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

c. **Notices.** Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first-class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

To City: City of Calistoga
 1232 Washington Street
 Calistoga, CA 94515
 Attention: City Manager
 Telephone: 707-942-2806

To Developer: Dan Farris
 1831 Greenwood Avenue
 Calistoga, CA 94515
 Copy by email to:
 danfarrisconstruction@yahoo.com

d. **Headings.** The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

e. **Waiver.** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.


f. **Further Assurances.** The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

g. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.

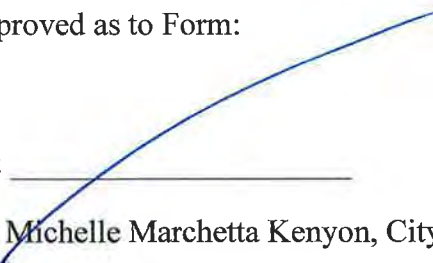
h. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by all parties hereto.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the dates set forth below their signatures.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

Approved as to Form:

By: 
Michelle Marchetta Kenyon, City Attorney

DEVELOPER

By: 

Name: DAN FARRIS

Title: DEVELOPER

Recording Requested By
And When Recorded Mail To:

City of Calistoga
City Clerk
1232 Washington Street
Calistoga, CA 94515

EXEMPT FROM RECORDING FEES
SECTION 27383

(Space Above This Line for Recorder's Use Only)

PAYMENT PLAN AGREEMENT FOR CONNECTION FEES

This Agreement is between Bob Beck, owner of 1207 Foothill Boulevard, Calistoga, CA 94515 ("Property Owner") and the City of Calistoga ("City"). This Agreement shall become effective upon its execution by both parties.

RECITALS

- A. Property Owner owns the parcel of real property located at 1207 Foothill Boulevard, and identified as Napa County Assessor Parcel Numbers 011-310-006 and 011-310-007 ("Property") and shown on Exhibit A attached hereto.
- B. The Property's water usage baseline allocation has been regularly exceeded for several years by uses on the Property.
- C. Property Owner has requested approval of a building permit for improvements to Property, which requires the payment of all outstanding City fees, including water and wastewater capacity fees.
- D. The Calistoga Municipal Code contains provisions that allow for a monthly surcharge over a period of time to acquire additional water and wastewater capacity allocation.
- E. Property Owner desires to make monthly payments on the total sum due to City for water and wastewater capacity fees not to exceed thirty-five thousand eight hundred seventy-six dollars and twenty-one cents (\$35,876.21), and the City is willing to accept this form of payment.

AGREEMENT

- 1. City shall allow the deferred payment of \$35,876.21 for an allocation of 0.257 acre feet of water and 0.231 acre feet of wastewater.
- 2. Property Owner and/or the Property's lessee shall make 36 monthly payments to the City, each in the amount of \$996.56. The first monthly payment shall be paid on or before the first day of the month following the date of execution of this agreement by the City

Manager, with subsequent payments due by the first of every succeeding month, pursuant to attached Exhibit B – Payment Schedule. Property Owner may pre-pay the balance due at any time without penalty.

3. Property Owner shall owe a late charge of two percent (2%) of the amount due if an amount due remains unpaid ten (10) days after the due date. If an amount due remains unpaid thirty (30) days after the due date to the City, a letter shall be sent to Property Owner providing notification of the default status. Failure to repay the amount due within thirty (30) days of receipt of written notice from the City that such payment is delinquent could, at the option of the City, result in acceleration of the note to become immediately due and payable.
4. To secure payments required of Property Owner to City under this Agreement, a lien is hereby created, established, and imposed by Property Owner upon the property described in Recital A above. The lien hereby created, established and imposed is given, is in favor of, and shall be held by City in an amount not to exceed \$35,876.21. City shall record this Agreement in the Office of the Napa County Recorder.
5. Property Owner will not sell, convey, assign, transfer, alienate, or otherwise dispose of its interest in the Property, either voluntarily or by operation of law, or agree to do so, without prior written consent of City. Consent to one transaction by City will not be deemed a waiver of the right to require consent to further or successive transactions. If Property Owner is a corporation, any sale, transfer, or disposition of fifty percent (50%) or more of the voting stock of Property Owner, including, without limitation, the parent company of Property Owner and the parent company of the parent company of Property Owner, will constitute a sale of the Property for purposes of this article. If Property Owner is a partnership, any change or addition of a general partner of Property Owner, change of partnership interests of Property Owner, or sale, transfer, or disposition of fifty percent (50%) or more of the voting stock or partnership interest of any partner of Property Owner or of any corporation or partnership that directly or indirectly owns or controls any partner of Property Owner, including, without limitation, each parent company of a partner of Property Owner and each parent company of any parent company of a partner of Property Owner, will constitute a sale of the Property for purposes of this section. Any transaction in violation of this section will cause the outstanding balance of the balance due, at the option of the City and without demand or notice, immediately to become due.
6. Monthly payments to City shall be delivered or mailed to:

City of Calistoga
Administrative Services
1232 Washington Street
Calistoga, California, 94515

3

IN WITNESS WHEREOF, the City and Owner have executed this Agreement as of the date acknowledged below.

CITY:

OWNER:

CITY OF CALISTOGA

BOB BECK

By: _____

Dylan Feik, City Manager

By: _____

Bob Beck

ATTEST:

Kathy Flamson
Kathy Flamson, City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF NAPA)

On DECEMBER 6, 2017, before me, Kathleen M. Flamson, Notary Public, the undersigned, personally appeared Dylan Feik, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kathleen M. Flamson
Signature of Notary Public

Place Notary Seal Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF NAPA)

On DECEMBER 6, 2017, before me, Kathleen M. Flamson, Notary Public, the undersigned, personally appeared Bob Beck, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kathleen M. Flamson
Signature of Notary Public

Place Notary Seal Above

Exhibit A

Legal Description

PARCEL ONE:

LOT 16, IN BLOCK A OF MIDDLE ADDITION TO CALISTOGA, AS THE SAME IS LAID DOWN AND DELINEATED UPON A CERTAIN MAP ENTITLED, "MAP OF CALISTOGA, SHOWING ITS EXTENSIONS, SURROUNDINGS AND THE HOT SULPHUR SPRINGS, NAPA COUNTY, CAL.," FILED MARCH 1, 1871 IN THE OFFICE OF THE COUNTY RECORDER OF SAID NAPA COUNTY.

SAID BLOCK BEING THAT BLOCK SO LETTERED ON SAID MAP AND BOUNDED ON THE NORTH BY MAIN STREET ON THE EAST BY THE SOUTHERLY EXTENSION OF THE EASTERLY LINE OF LAUREL STREET AND ON THE WEST BY THE SOUTHERLY EXTENSION OF THE WESTERLY LINE OF BERRY STREET.

PARCEL TWO:

LOT 17, IN BLOCK A OF MIDDLE ADDITION TO CALISTOGA, AS THE SAME IS LAID DOWN AND DELINEATED UPON A CERTAIN MAP ENTITLED, "MAP OF CALISTOGA, SHOWING ITS EXTENSIONS, SURROUNDINGS AND THE HOT SULPHUR SPRINGS, NAPA COUNTY, CAL.," FILED MARCH 1, 1871 IN THE OFFICE OF THE COUNTY RECORDER OF SAID NAPA COUNTY, TO WHICH MAP REFERENCE FOR A MORE COMPLETE DESCRIPTION IS MADE.

The Real Property or Its address is commonly known as 1207 FOOTHILL BOULEVARD, CALISTOGA, CA. The Assessor's Parcel Numbers for the Real Property Are 011-310-006 AND 011-310-007.

7
Exhibit B
Payment Schedule

Enter values	
Loan amount	\$ 35,876.21
Annual interest rate	0.00 %
Loan period in years	3
Number of payments per year	12
Start date of loan	12/1/2017
Optional extra payments	\$ -

Loan summary	
Scheduled payment	\$ 996.56
Scheduled number of payments	36
Actual number of payments	36
Total early payments	\$ -
Total interest	\$ 0.00

Lender name: Busters BBQ

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	1/1/2018	\$ 35,876.21	\$ 996.56	\$ -	\$ 996.56	\$ 996.56	\$ 0.00	\$ 34,879.65	\$ 0.00
2	2/1/2018	34,879.65	996.56	-	996.56	996.56	0.00	33,883.09	0.00
3	3/1/2018	33,883.09	996.56	-	996.56	996.56	0.00	32,886.53	0.00
4	4/1/2018	32,886.53	996.56	-	996.56	996.56	0.00	31,889.96	0.00
5	5/1/2018	31,889.96	996.56	-	996.56	996.56	0.00	30,893.40	0.00
6	6/1/2018	30,893.40	996.56	-	996.56	996.56	0.00	29,896.84	0.00
7	7/1/2018	29,896.84	996.56	-	996.56	996.56	0.00	28,900.28	0.00
8	8/1/2018	28,900.28	996.56	-	996.56	996.56	0.00	27,903.72	0.00
9	9/1/2018	27,903.72	996.56	-	996.56	996.56	0.00	26,907.16	0.00
10	10/1/2018	26,907.16	996.56	-	996.56	996.56	0.00	25,910.60	0.00
11	11/1/2018	25,910.60	996.56	-	996.56	996.56	0.00	24,914.03	0.00
12	12/1/2018	24,914.03	996.56	-	996.56	996.56	0.00	23,917.47	0.00
13	1/1/2019	23,917.47	996.56	-	996.56	996.56	0.00	22,920.91	0.00
14	2/1/2019	22,920.91	996.56	-	996.56	996.56	0.00	21,924.35	0.00
15	3/1/2019	21,924.35	996.56	-	996.56	996.56	0.00	20,927.79	0.00
16	4/1/2019	20,927.79	996.56	-	996.56	996.56	0.00	19,931.23	0.00
17	5/1/2019	19,931.23	996.56	-	996.56	996.56	0.00	18,934.67	0.00
18	6/1/2019	18,934.67	996.56	-	996.56	996.56	0.00	17,938.11	0.00
19	7/1/2019	17,938.11	996.56	-	996.56	996.56	0.00	16,941.54	0.00
20	8/1/2019	16,941.54	996.56	-	996.56	996.56	0.00	15,944.98	0.00
21	9/1/2019	15,944.98	996.56	-	996.56	996.56	0.00	14,948.42	0.00
22	10/1/2019	14,948.42	996.56	-	996.56	996.56	0.00	13,951.86	0.00
23	11/1/2019	13,951.86	996.56	-	996.56	996.56	0.00	12,955.30	0.00
24	12/1/2019	12,955.30	996.56	-	996.56	996.56	0.00	11,958.74	0.00
25	1/1/2020	11,958.74	996.56	-	996.56	996.56	0.00	10,962.18	0.00
26	2/1/2020	10,962.18	996.56	-	996.56	996.56	0.00	9,965.61	0.00
27	3/1/2020	9,965.61	996.56	-	996.56	996.56	0.00	8,969.05	0.00
28	4/1/2020	8,969.05	996.56	-	996.56	996.56	0.00	7,972.49	0.00
29	5/1/2020	7,972.49	996.56	-	996.56	996.56	0.00	6,975.93	0.00
30	6/1/2020	6,975.93	996.56	-	996.56	996.56	0.00	5,979.37	0.00
31	7/1/2020	5,979.37	996.56	-	996.56	996.56	0.00	4,982.81	0.00
32	8/1/2020	4,982.81	996.56	-	996.56	996.56	0.00	3,986.25	0.00
33	9/1/2020	3,986.25	996.56	-	996.56	996.56	0.00	2,989.68	0.00
34	10/1/2020	2,989.68	996.56	-	996.56	996.56	0.00	1,993.12	0.00
35	11/1/2020	1,993.12	996.56	-	996.56	996.56	0.00	996.56	0.00
36	12/1/2020	996.56	996.56	-	996.56	996.56	0.00	0.00	0.00

CONTRACT

AGREEMENT TO PROVIDE LABOR, MATERIALS AND EQUIPMENT FOR VARIOUS CITY ELECTRICAL PROJECTS

This AGREEMENT is made and entered into as of the date of execution by the City of Calistoga, a municipal corporation, hereinafter referred to as "CITY" and Calistoga Solutions Electric, hereinafter referred to as "CONTRACTOR".

RECITALS

The CITY requires outside assistance to provide labor, materials and equipment for various electrical projects within the City.

CONTRACTOR represents itself as possessing the necessary skills and qualifications to provide the equipment and services required by the CITY;

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONTRACTOR agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 This Agreement shall continue until terminated by either party.

2.0 CONTRACTOR'S OBLIGATIONS (ATTACHMENT A)

2.1 CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are requested for various electrical maintenance projects by the Public Works Director, Deputy Public Works Director, Maintenance Superintendent, Utility Superintendent, Senior Maintenance Technician – Parks & Buildings, and the Senior Maintenance Technician – Streets, Water & Sewer.

2.2 CONTRACTOR shall perform all work required to provide the requested labor, materials and equipment in conformity with applicable requirements of law: Federal, State and Local, Calistoga adopted Building and Electrical Codes and the most current version of the City of Santa Rosa Standards.

2.3 CONTRACTOR shall maintain professional certifications as required in order to properly comply with all the CITY, State, and Federal law, including a City of Calistoga Business License.

3.0 PAYMENT FOR LABOR, MATERIALS AND EQUIPMENT (ATTACHMENT A)

3.1 Compensation: The compensation to be paid to CONTRACTOR shall be on a time and materials basis, or as negotiated. Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

3.2 Timing of Payment: Payment shall be made in the following manner: Thirty (30) days from receipt of invoices.

4.0 SUBCONTRACTING (ATTACHMENT B)

4.1 If CONTRACTOR subcontracts for any of the equipment or support services that are to be provided under this Agreement, CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of CONTRACTOR'S subcontractors, material suppliers and for the persons either directly or indirectly employed by the subcontractors or suppliers, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor or CONTRACTOR and the CITY. CONTRACTOR shall bind every subcontractor to the terms of the Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 Subcontractors are required to be licensed and insured, with coverages not less than those listed in Section 12 of this agreement, and maintain a current City of Calistoga Business License.

5.0 EQUIVALENT TERMS (ATTACHMENT C)

NOT USED

6.0 EXTRA WORK

CONTRACTOR shall not provide equipment or perform support services in excess of the requested labor, materials and equipment for each project, without the prior approval of the CITY.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

The CITY or CONTRACTOR may terminate this AGREEMENT by notifying the other Party by certified mail of said termination.

9.0 STATUS OF CONTRACTOR

CONTRACTOR shall provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT as an independent Contractor and in pursuit of CONTRACTOR'S independent calling, and not as an employee of the CITY.

10.0 ASSIGNMENT OF CONTRACT

CONTRACTOR is without right to and shall not assign this AGREEMENT or any part thereof without the prior written consent of the CITY. CITY reserves the right to terminate the AGREEMENT if the assignees are not acceptable to the CITY.

11.0 HOLD HARMLESS

11.1 CONTRACTOR agrees to indemnify and hold the CITY and CITY officer's, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONTRACTOR or CONTRACTOR'S agents,

employees, subcontractors, officials, officers or representatives. CONTRACTOR'S obligation herein includes, but is not limited to, alleged defects in the labor, materials and equipment delivered by CONTRACTOR. Upon demand, CONTRACTOR shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

11.2 CONTRACTOR'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

12.0 INSURANCE

12.1 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, as indicated:

12.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, coverage shall apply to all owned, non-owned and hired vehicles.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

12.3 Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a general Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to higher limits maintained by the Contractor.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Employer's Liability (if required): \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

12.4 Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the

Contractor's insurance and shall not contribute with it.

The policy shall cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately

Contractor shall provide 30-day written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Town.

Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

13.5 Waiver of Subrogation. Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

14.0 DISPUTES

14.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommend methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

14.2 If the dispute is not resolved, the aggrieved party shall send to the CITY a letter outlining the dispute for City Manager's resolution.

14.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them by law.

15.0 NOTICES

15.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

15.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

CITY OF CALISTOGA
1232 Washington Street
Calistoga, CA 94515

Attention: Michael Kirn
Public Works Director
Public Works Department

15.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CONTRACTOR and the proper person to receive any notice on the CONTRACTOR'S behalf is:

Fred Vogel
Calistoga Solutions Electric
1710 Cedar Street
Calistoga, CA 94515


16.0 ATTORNEY'S FEES

In the event that one party incurs expenses, including attorney's fees and costs, in enforcing the provisions of this AGREEMENT, such party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorney's fees as allowed by statute.

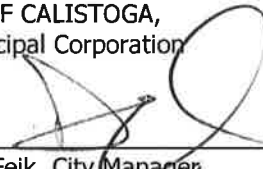
17.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

CALISTOGA SOLUTIONS, ELECTRIC

By: 
Fred Vogel, Proprietor
Date 12/28/17

CITY OF CALISTOGA,
a Municipal Corporation

By: 
Dylan Feik, City Manager
Date 12/29/17

ATTEST:


Kathy Flannan, City Clerk

Fred Vogel DBA Calistoga Solutions Electric

C-10 License #973165

1710 Cedar Street, Calistoga, CA 94515

Cell (707) 888-5740

12/25/17

RATE SCHEDULE

Scheduled Electrical work during normal working hours (Monday thru Friday from 7am – 5pm)	\$95 per hour
Scheduled Electrical work outside of normal working hours	\$105 per hour
Unscheduled electrical work (call outs)	\$110 per hour

ATTACHMENT A

CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are requested for various electrical maintenance projects by the Public Works Director, Deputy Public Works Director, Maintenance Superintendent, Utility Superintendent, Senior Maintenance Technician – Parks & Buildings, and the Senior Maintenance Technician – Streets, Water & Sewer.

COMPENSATION SCHEDULE (Attached)

ATTACHMENT B

SUBCONTRACTORS

None

CONSULTANT SERVICES AGREEMENT

Authorizing Agreement No. 751

THIS AGREEMENT is entered into as of the 20TH day of October, 2017, by and between the CITY OF CALISTOGA, herein called the "City," and **Hugo Garcia Manriquez** herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain accounting services and;

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section A of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section A of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant Hugo Garcia Manriquez is to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than July 1, 2017 and be completed not later than June 30, 2018. Consultant shall perform its services in accordance with the schedule and incorporated herein by reference. Any changes to these dates must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Five Thousand Dollars (\$5,000) for fiscal year ending June 30, 2017 unless both parties confer and agree to additional compensation. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. The City shall upon receipt of a written itemized monthly statement pay fees and applicable expenses under this Agreement within thirty (30) days of receiving such invoices from Consultant, unless contested. Payment of any fee or reimbursement shall not constitute a waiver by the City of any breach of any part of this agreement. Late charges will be assessed upon payments not received within thirty (30) days from receipt of invoice at a rate of 1.5% per month.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it is in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum merit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policies which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 15-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

19. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

20. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

21. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

22. Arbitration of Professional Liability or Other Claim. If a dispute between the City and Consultant arises over the fees charged for the services, the controversy will be first

25. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

26. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

27. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

29. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

30. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or

provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

31. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work

B. Exhibit B: Compensation

32. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

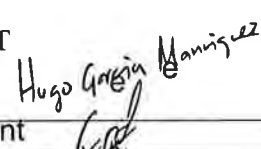
33. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

34. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

35. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA
By: 
City Manager
Date: 12/22/17

CONSULTANT
By: 
Title: consultant
Date: December, 11, 2017

ATTEST:

By: Kathy Harnsar
City Clerk

EXHIBIT A

Scope of Work

Translation of English documents into Spanish as needed.

EXHIBIT B

Compensation

Hugo Garcia Manriquez will provide written Spanish translations @ \$60.00 per every 250 words (250 words being the standard number of words in 1 page), as needed. The minimum charge for any work under 250 words is also @ \$60.00, dls.

City agrees to reimburse Consultant for necessary and reasonable costs and expenses related to the services required under this Agreement.

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "Agreement") is entered into as of the 1st day of February, 2018 (the "Effective Date") by and between **MAGELLAN HEALTH SERVICES OF CALIFORNIA, INC.-EMPLOYER SERVICES**, a California corporation, with offices at 3131 Camino Del Rio North, 4th Floor, San Diego, CA 92108 ("Magellan Employer Services") and **CITY OF CALISTOGA**, with offices at 1232 Washington Street, Calistoga, CA 94515 ("Sponsor").

RECITALS

1. Magellan Employer Services is engaged in the business of providing employee assistance program and related wellness services to employers and labor organizations.

2. Sponsor desires to contract with Magellan Employer Services for certain of its services and Magellan Employer Services agrees to provide such services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, Magellan Employer Services and Sponsor hereby agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 Base Fee: the PEPM Rate multiplied by the applicable Employee Count.

1.2 Contract Anniversary Date: the day following the last day of the initial term or any renewal term of this Agreement.

1.3 Contract Year: a one (1) year period commencing on the Effective Date or an anniversary of such Effective Date, as applicable.

1.4 Employee: an individual whose current employment or employment status (e.g., retiree, beneficiary under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended) with Sponsor is the basis for the individual's eligibility for Services.

1.5 Employee Assistance Program ("EAP"): a systematic program to help individuals resolve personal problems, such as family conflict, stress, and drug or alcohol abuse; to address common work/life issues; and to provide training, consultation, and other management services relating to the effective utilization of the EAP by Sponsor and its Employees.

1.6 Employee Count: the number of Employees eligible for Services at any point in time.

1.7 Enrollee: an Employee or a Household Member.

1.8 ERISA: the Employee Retirement Income Security Act of 1974, as amended.

1.9 Household Member: an individual who either a) permanently, physically resides in the household of an Employee or b) is a dependent of an Employee.

1.10 PEPM Rate: the sum of the rates that are calculated on a per Employee per month basis as set forth on Addendum B.

1.11 Supplemental Fees: all fees and charges except for the Base Fee as set forth on Addendum B.

2. SERVICES

Magellan Employer Services will provide EAP services to Sponsor and its Employees and Household Members within the United States (including Puerto Rico) as set forth in Addendum A ("Services").

3. SERVICE FEES

3.1 Payment Obligation. As consideration for the Services to be performed by Magellan Employer Services hereunder, Sponsor agrees to pay Magellan Employer Services the Base Fee and all applicable Supplemental Fees as set forth on Addendum B, all as may be adjusted according to the provisions of this Agreement (collectively, as so adjusted, the "Service Fees"). Any undisputed Service Fees not paid when due shall be subject to interest charges at the lesser of one percent (1.0%) per month or the maximum rate allowed under applicable law.

3.2 Determination of Payment Amounts. The Base Fee will be due in advance in monthly or quarterly installments (or as otherwise required by law), as mutually agreed upon by the parties from time to time. Any Supplemental Fees incurred by Sponsor will be invoiced at the next regular billing interval. The Base Fee shall be calculated in accordance with the PEPM Rate set forth on Addendum B and the Employee Count that exist as of the date no later than the first day of the applicable billing period. Sponsor agrees that any failure to provide Magellan Employer Services with an accurate Employee Count on which an invoice is based or to correctly calculate any self-bill payment shall not serve as a basis to dispute or adjust the amount of any payment to Magellan Employer Services without prior notice to Magellan Employer Services. As appropriate, any retrospective reconciliations and adjustments will be made in accordance with Section 3.4.2. All payments due to Magellan Employer Services that are not paid via electronic funds transfer shall be addressed to: Magellan Healthcare, Inc., Magellan Lockbox, P.O. Box 785341, Philadelphia, PA 19178-5341, or to such other address as may be communicated to Sponsor by Magellan Employer Services from time to time.

3.3 Covered Population. As of the Effective Date, the PEPM Rate assumes an Employee Count of 65.

3.4 Fee Adjustments:

3.4.1 Renewals. No later than ninety (90) days prior to the Contract Anniversary Date, Magellan Employer Services will provide Sponsor with the PEPM Rate and Supplemental Fees applicable to the next renewal term and such Service Fees will become effective on the Contract Anniversary Date unless this Agreement is terminated pursuant to the terms of this Agreement. Magellan Employer Services may not increase Service Fees nor decrease Services during the term of this Agreement unless Sponsor has agreed in writing to the changes.

3.4.2 Population Variances. If the Employee Count reported by Sponsor and used to calculate the Base Fee for any billing period varied by fifteen percent (15%) or more above or below the actual Employee Count for such period or periods, Magellan Employer Services may adjust the Base Fee in accordance with the new Employee Count as of the effective date of the change in population for a period not to exceed six (6) contract months. As applicable, Sponsor shall pay Magellan Employer Services the amount of any undisputed underpayment or Magellan Employer Services shall credit the amount of any overpayment to Sponsor, within thirty (30) days of the resolution of any variation.

3.5 Taxes. Any applicable sales, use, premium, excise or other tax, fee or surcharge imposed on Services provided under this Agreement ("Taxes") will be paid by Sponsor. Notwithstanding the foregoing, in no event shall Sponsor be liable for any taxes, license fees, or other amounts levied against Magellan Employer Services that relate to Magellan Employer Services' normal business operations, income taxes, gross receipts taxes, or state licensing fees. Sponsor shall indemnify Magellan Employer Services for any Taxes and any penalties and/or interest thereon paid by Magellan Employer Services.

4. TERM AND TERMINATION

4.1 Term. The term of this Agreement shall be for three (3) years beginning on the Effective Date. Thereafter, the Agreement shall automatically renew for successive one (1) year terms from the Contract Anniversary Date unless terminated as provided in Section 4.2 or either party gives the other written notice of nonrenewal not less than sixty (60) days prior to the expiration of the term of this Agreement or any renewal thereof.

4.2 Termination. This Agreement may be terminated as follows:

4.2.1 Material Breach. Either party may terminate for a material breach of the Agreement, other than non-payment of Service Fees, but only if the party seeking to terminate has first given the party in breach written notice specifying the nature and, so far as then known, the extent of the breach and the action required to correct the breach. The party in breach shall be afforded thirty (30) days (or such additional time as the non-breaching party may reasonably allow, as confirmed in writing) to cure the breach or achieve substantial cure if a complete cure cannot be reasonably effectuated within the designated period. If the breach remains uncured at the expiration of the designated period, the non-breaching party may, at any time that the breach remains uncured thereafter, terminate this Agreement upon five (5) business days' advance written notice.

4.2.2 Non-payment of Fees. Magellan Employer Services may terminate for a default by Sponsor in its payment obligations under this Agreement unless there is a bona fide dispute regarding the Service Fees due. Provided, Magellan Employer Services shall not terminate the Agreement for non-payment of undisputed Service Fees unless Sponsor's payment is delinquent for more than thirty (30) days, Sponsor has been duly notified of the delinquency by Magellan Employer Services, and at least thirty (30) days have elapsed since the date of notification of delinquency. If Sponsor pays the delinquent amount in full, including any accrued interest, prior to the next payment date after cancellation of the Agreement and the Agreement was not previously cancelled for non-payment during the 12-month period prior to the effective date of cancellation, Magellan Employer Services shall reinstate the Agreement as though it had never terminated. During the period of time from the date of notice to Sponsor of the delinquency through any reinstatement of the Agreement, Magellan Employer Services shall not be obligated to perform on-site services (e.g., Service Hours, CISM Services), deliver print communications materials to Sponsor, or refer new Enrollee cases to an EAP Counselor for In-Person Sessions (as defined in Addendum A of this Agreement).

4.2.3 Miscellaneous Events. Either party may terminate this Agreement immediately upon written notice to the other party if: (a) the other party engages in fraud or intentional misrepresentation in connection with a decision to enter into this Agreement or fulfill any obligations hereunder, or (b) the other party ceases to operate.

4.3 Effect of Termination.

4.3.1 Continuity of Care. Sponsor and Magellan Employer Services shall cooperate to avoid any interruption in the continuity of care to Enrollees.

4.3.2 Reports. Provided Sponsor has paid Magellan Employer Services all undisputed Service Fees due under this Agreement, Magellan Employer Services shall release to Sponsor all final aggregate utilization reports on the next scheduled report date.

4.3.3 Use of Materials. Sponsor's right to use Magellan Employer Services proprietary materials furnished during the term of this Agreement, including without limitation, manuals, videotapes, DVDs, employee print communications, and Web site, shall cease upon the effective date of termination. Upon Magellan Employer Services' request, Sponsor shall return or destroy any such proprietary materials.

4.3.4 Return of Service Fees. Magellan Employer Services shall, within thirty (30) days of termination, return to Sponsor the pro rata portion, if any, of the Service Fees paid to Magellan Employer Services which corresponds to any unexpired period for which payment has been received, less any undisputed amount then due Magellan Employer Services.

5. OBLIGATIONS OF SPONSOR

5.1 Sponsor Cooperation. Sponsor agrees to cooperate with Magellan Employer Services by furnishing accurate information necessary for the delivery of Services hereunder on a timely basis in a form and manner reasonably specified by Magellan Employer Services.

5.2 Notice of Employee Count. If at any time the actual Employee Count varies from the previously reported Employee Count by fifteen percent (15%) or more, Sponsor shall provide prompt notice to Magellan Employer Services of such variation, the effective date of the change, and the revised Employee Count. Sponsor shall bear the risks associated with an inaccurate Employee Count reported to Magellan Employer Services, whether such report was made by Sponsor or by a third party on behalf of Sponsor.

6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. Without limiting the scope or extent of the protection afforded Sponsor for the liabilities assumed by Magellan Employer Services hereunder, Magellan Employer Services agrees to maintain during the term of this Agreement the following coverages: (a) commercial general liability insurance with limits of liability of no less than \$1,000,000 per occurrence and \$3,000,000 aggregate, and (b) managed care errors and omissions insurance with limits of liability of no less than \$5,000,000 per claim and aggregate.

6.2 Indemnification. As allowed by law, each party (the "Indemnifying Party") agrees to defend and indemnify the other party, its affiliates and their respective officers, directors and employees (the "Indemnified Party") from any third-party claims, losses, damages, liabilities, or expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from the breach of this Agreement by the Indemnifying Party or its officers, directors, employees, or agents, but only if the Indemnified Party has not, by act or failure to act, materially jeopardized the position of the Indemnifying Party with respect to the resolution or defense of the claim. The Indemnified Party must promptly notify the Indemnifying Party upon receipt of notice of any claim or lawsuit and must permit the Indemnifying Party's authorized attorneys and personnel to handle and control the defense of any such claim or lawsuit. The Indemnified Party agrees to fully cooperate and aid in such defense at its own cost. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising

out of such claim, and does not contain any equitable order, judgment or term which in any manner affects, restrains or interferes with the business of the Indemnified Party or any of its affiliates.

7. PROPRIETARY INFORMATION

In connection with the performance of Services under this Agreement, each party may disclose to the other certain confidential information concerning the disclosing party's business, including confidential information that may have been disclosed prior to execution of this Agreement, regardless of whether such information is marked or otherwise designated "confidential" or "proprietary," and regardless of whether such information is furnished in oral, written, or electronic form ("Proprietary Information"). The parties recognize and agree that any such Proprietary Information shall remain the exclusive property of the disclosing party and shall not be used or disclosed for any purpose other than as contemplated by this Agreement. By disclosing Proprietary Information, neither party shall be deemed to have waived any copyright, trademark or patent right that it, its parent, subsidiary or affiliate, may have. In the event that the receiving party is requested, or required by applicable law, regulation or legal process, to disclose any Proprietary Information of the disclosing party, the receiving party agrees that it will provide the disclosing party with prompt notice of such request or requirement and reasonable cooperation in order to enable the disclosing party to seek an appropriate protective order or take such other steps as it deems reasonably necessary. This section shall not apply to any information which the receiving party can demonstrate (a) was already available to the public at the time of disclosure, or subsequently became available to the public, other than by breach of this Agreement, (b) was available to the receiving party on a nonconfidential basis prior to its disclosure by the disclosing party, (c) becomes available to the receiving party on a nonconfidential basis from a person other than the disclosing party who is not otherwise bound by a confidentiality agreement with the disclosing party, or is otherwise not under an obligation to the disclosing party or any of its representatives not to transmit the information to the receiving party, or (d) was independently developed or discovered by the receiving party.

8. COMPLIANCE WITH LAWS

8.1 General. Each party shall comply with all applicable federal, state and local laws and regulations relating to performance under this Agreement, including without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended, the Confidentiality of Medical Information Act, California Civil Code 56 et seq., and all other applicable privacy laws. Magellan Employer Services further agrees it will not discriminate against any Enrollee or applicant for employment because of race, color, religion, gender, national origin, ancestry, marital status, sexual orientation, age, disability or other protected class. Magellan Employer Services will reasonably accommodate Enrollees seeking Services.

8.2 Knox-Keene. The EAP described in this Agreement is subject to Chapter 2.2 of Division 2 of the California Health and Safety Code and to Title 28 of the California Code of Regulations. Any provision required to be in the Agreement by either of the above shall bind Magellan Employer Services whether or not any such provision appears in the Agreement.

8.3 Fiduciary Status. To the extent that any Services hereunder are governed by ERISA, Magellan Employer Services shall be a fiduciary, within the meaning of ERISA, of the applicable group health plan. Such fiduciary status, however, is limited to the responsibilities specified in this Agreement. Magellan Employer Services is not intended to be and shall not be the plan administrator, within the meaning of ERISA, of such group health plan.

9. ENROLLEE DISPUTES AND COMPLAINTS

9.1 Grievance Process. Magellan Employer Services will maintain grievance policies and procedures that comply with Knox-Keene and make them available to Sponsor and to Enrollees upon request. Magellan Employer Services will offer a resolution for each grievance within thirty (30) days of receipt.

9.2 Prohibition of Retaliation. Neither Magellan Employer Services nor any EAP Counselor will discriminate against an Enrollee for having filed a grievance. Magellan Employer Services will investigate any alleged retaliation and take appropriate action.

9.3 Department of Managed Health Care. The following information will be made available to Enrollees on all communications relating to Magellan Employer Services' grievance procedures or Enrollee grievances:

The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a grievance against your health plan, you should first telephone your health plan at 1-800-523-5668 and use your health plan's grievance process before contacting the department. Utilizing this grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your health plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are experimental or investigational in nature and payment disputes for emergency or urgent medical services. The department also has a toll-free telephone number (1-888-HMO-2219) and a TDD line (1-877-688-9891) for the hearing and speech impaired. The department's Internet Web site <http://www.hmohelp.ca.gov> has complaint forms, IMR application forms and instructions online.

10. SPONSOR'S OBLIGATIONS UNDER KNOX-KEENE

10.1 Distribution of Information. Sponsor shall disseminate to Employees its information about the EAP and their eligibility for participation in the EAP, and copies of Magellan Employer Services' Combined Evidence of Coverage and Disclosure Form, a sample of which is provided under separate attachment as Exhibit #1. Sponsor shall distribute the Combined Evidence of Coverage and Disclosure Form at the inception of the program, to all individuals who become Employees after the inception of the program, and following receipt from Magellan Employer Services of a Combined Evidence of Coverage and Disclosure Form with material revisions.

10.2 Notice of Cancellation. In the event that Magellan Employer Services sends notice of cancellation for any reason to Sponsor, Sponsor shall mail promptly to each Employee a legible, true copy of such notice and shall, within thirty (30) days of receipt of such notice from Magellan Employer Services, provide Magellan Employer Services with proof of such mailing and the date thereof.

10.3 Notice of Material Changes. In the event that Magellan Employer Services sends notice to Sponsor with respect to a material matter, Sponsor shall disseminate such notice to Enrollees by the next regular communication to employees but in no event later than 30 days after receipt of the notice from Magellan Employer Services.

11. DISRUPTION OF SERVICE BY EAP COUNSELORS

11.1 Notice to Sponsor. In the event that any termination, breach of contract, or inability to perform of any EAP Counselor could materially and adversely affect Sponsor, Magellan Employer Services shall provide Sponsor written notice thereof within thirty (30) days of termination of Magellan Employer Services' contract with such EAP Counselor.

11.2 Continuation of Care. In the event that the EAP Counselor from whom an Enrollee is receiving counseling under the Agreement terminates his/her contractual relationship with Magellan Employer Services, Magellan Employer Services will permit the Enrollee to continue counseling with that EAP Counselor, as clinically appropriate, up to the limit on maximum number of In-person Sessions, provided the EAP Counselor agrees to provide the counseling on the same terms and conditions, unless Magellan Employer Services terminated the provider contract because of fraud, criminal activity, incompetence or unprofessional conduct likely to be harmful to clients. If counseling with that EAP Counselor is not available, Magellan Employer Services will arrange for another EAP Counselor without charge to Sponsor or the Enrollee.

12. MISCELLANEOUS

12.1 Status of the Parties. Magellan Employer Services and Sponsor agree that they are independent contractors and neither Magellan Employer Services nor Sponsor is the agent of the other, nor is either party authorized to act on behalf of the other in any manner.

12.2 Third Party Beneficiaries. The parties have not created and do not intend to create by this Agreement any enforceable rights in any Enrollee, provider, or other person not a party to this Agreement.

12.3 Survival. Any terms of this Agreement that by their nature extend beyond their expiration or termination shall remain in effect until fulfilled. No confidentiality or indemnification obligation contained in this Agreement shall be affected by expiration or termination of this Agreement. This Agreement shall bind the parties and their legal representatives, successors, heirs and assigns.

12.4 Notices. Unless otherwise provided in this Agreement, all notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently provided if given by personal service or sent by registered, certified or express mail, reputable overnight courier service or facsimile with receipt confirmed as follows:

To Magellan Employer Services: c/o Magellan Healthcare, Inc.
14100 Magellan Plaza Drive
Maryland Heights, MO 63043
Attention: Legal Department
FAX: 314-387-4958

To Sponsor: City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Attention: Gloria Leon
FAX: 707-942-2831

From time to time, either party may designate a different name or address for purposes of notice by notice to the other party given in accordance with this paragraph.

12.5 Modification of Agreement. Any modification, alteration, or change to the terms of this Agreement, or any addenda attached hereto, shall be made only by a written agreement duly executed by the parties, subject to any approval of any applicable regulatory authority if required by applicable law or regulation. Magellan Employer Services may not increase the Service Fees nor decrease the level of Services during the term of the Agreement except (i) upon the written agreement of Sponsor or (ii) upon thirty (30) days' written notice to Sponsor.

12.6 Governing Law. This Agreement is deemed to be made under and shall be governed by and construed according to the laws of the State of California except to the extent such laws may be preempted by ERISA.

12.7 Waiver. The failure of any party in any one or more instances to insist upon strict performance of any of the terms and provisions of this Agreement, or to exercise any option conferred in this Agreement, shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms, provisions or options on any future occasion.

12.8 Enforceability. The invalidity or unenforceability of any term or provision herein shall in no way affect the validity or enforceability of any other term or provision.

12.9 Force Majeure and Excuse of Performance. Neither party shall be liable to the other for damages or monetary penalties of any kind or deemed in default under this Agreement for any failure to perform or delay in performing to the extent that its performance is hindered, delayed, or rendered impossible due to an event or occurrence beyond the reasonable control of the party, and without its fault or negligence, including, without limitation, the breakdown, malfunction or other failure of any external third party telecommunication system or other system or mechanism by which information and data is stored or transmitted.

12.10 Entire Agreement. This Agreement, including all attached addenda, represents the entire agreement between the parties and supersedes any and all prior written or oral agreements or understandings related to the subject matter hereof. Notwithstanding the foregoing, this Agreement hereby incorporates any business associate agreement executed by or on behalf of the parties in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA").

12.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Magellan Employer Services and Sponsor have executed this Agreement by their duly authorized representatives.

**MAGELLAN HEALTH SERVICES OF
CALIFORNIA, INC.-EMPLOYER SERVICES**

CITY OF CALISTOGA

By: Richard T. Clarke

Date: 1/5/18

By: Dylan Fark
City Manager

Date: 12/29/17

ADDENDUM A STATEMENT OF WORK

A. EAP Services

1. Definitions.

1.1 Brief Counseling: a problem-focused form of individual or family outpatient counseling that (a) seeks resolution of problems in living (e.g., parenting concerns, emotional stress, marital and family distress, alcohol- and drug-related problems) rather than basic character change, (b) emphasizes counselee skills, strengths and resources, (c) involves setting and maintaining realistic goals that are achievable in a one (1) to five (5) month period, (d) encourages counselees to practice behavior outside the counseling session to promote therapeutic goals, and (e) in which the counselor provides structure, interprets behavior, offers suggestions, and assigns "homework" activities.

1.2 Computerized Cognitive Behavioral Therapy: web-based, interactive software that uses psychoeducation and behavior change activities to assist Enrollees in the management of certain health conditions, including substance abuse, depression, insomnia, anxiety, and obsessive-compulsive disorder.

1.3 Crisis Counseling: the process of responding to a request for immediate services in order to determine whether an emergency exists and, based on that determination, of making a referral to emergency behavioral health services, to community resources, or to an EAP Counselor. Crisis Counseling includes communication with the person in crisis that is focused on defusing the person's severe emotional reaction to a situation in order to enable that person to accept the referral and deal with the immediate crisis without causing harm to self or others.

1.4 Critical Incident Stress Management ("CISM") Services: a response to and consultation in connection with a sudden, unanticipated, traumatic incident or circumstance (e.g., accident, death, threat of violence, natural disaster) that produces a high degree of distress in the affected workplace of Sponsor or an immediate or delayed emotional reaction in Employees, that surpasses normal coping mechanisms.

1.5 Customer Service Associate or "CSA": an intake service representative employed by Magellan Employer Services at its service center to respond telephonically to Enrollee requests for EAP services.

1.6 EAP Consultant: a licensed behavioral health professional employed by Magellan Employer Services at its service center to respond telephonically to Enrollee requests for EAP services.

1.7 EAP Counselor: a psychologist, clinical social worker, marriage family and child counselor, or other professional licensed or certified to deliver behavioral health counseling services under the laws of the state in which he or she practices, who is under contract with Magellan Employer Services to provide EAP services, and who has (a) training and experience in assessing substance abuse problems and in conducting focused, problem-resolution counseling and (b) at least a master's level degree in an appropriate field.

1.8 Episode of Care: a continuous course of counseling for a specific problem or set of problems, up to the number of In-person Sessions specified in Section 3.2 of this Addendum A.

1.9 In-person Session: a counseling session of approximately 50 minutes at the office of an EAP Counselor for an Enrollee, individually or with others, as appropriate for the Enrollee's concern.

2. Web Site. Magellan Employer Services will provide Sponsor and Enrollees with access to its Web site, which includes information on wellness subjects, general health and workplace topics for organizations, interactive self-improvement programs and self-assessment tools, Computerized Cognitive Behavioral Therapy modules, a directory of EAP Counselors and a database of child and elder care providers. In addition, Sponsor and Enrollees may access an enhanced comprehensive online health improvement program that includes an array of interactive, personal health improvement resources supporting individual and organizational well-being.

3. Personal Consultation Services.

3.1 Telephonic EAP Services. Magellan Employer Services will maintain a toll-free telephone access line twenty-four (24) hours per day, seven (7) days per week, for Enrollees to access EAP services. EAP Consultants will be available through the telephone access line to assess the caller's problem, arrange for appropriate assistance (e.g., provide coaching and/or refer to relevant Computerized Cognitive Behavioral Therapy, a benefit program, community resource or other service provider) and provide any necessary Crisis Counseling.

3.2 In-person EAP Services. Magellan Employer Services will link each Enrollee who requests in-person counseling services to an EAP Counselor. The EAP Counselor will assess the Enrollee's problem(s) and, in accordance with the EAP Counselor's best judgment, provide Brief Counseling and/or refer the Enrollee to an appropriate treatment provider and/or community resource. Each Enrollee is eligible for up to eight (8) In-person Sessions per problem per year, as clinically appropriate.

3.3 Online Chat. Live chat is available to Participants to obtain program information, locate EAP resources and receive assistance or administrative support in utilizing their EAP offerings and related services described herein.

3.4 Run-off Services. For a period of thirty (30) days following termination of this Agreement, Magellan Employer Services will provide In-person Sessions, so long as In-person Sessions remain available and are clinically appropriate, to those Enrollees with open routine cases as of the effective date of termination. Any open formal supervisory referrals to the EAP will be transitioned to a successor vendor or other provider as directed by Sponsor.

4. Treatment Compliance Monitoring. Upon request and with the concurrence of the Employee, Magellan Employer Services will monitor an Employee's compliance with a substance abuse treatment program monthly, as needed, for up to one (1) year.

5. Management Consultation. Upon request, Magellan Employer Services will provide telephonic consultation services (i) to any supervisor who is considering the referral of an Employee to the EAP, and in the case of a formal, supervisor-referred Employee, remain in regular contact with the referring supervisor regarding work performance issues; (ii) with regard to the management of high-risk situations in which an Employee's personal problems may create a threat of violence in the workplace; and (iii) as appropriate and to the extent authorized by an Employee or permitted by law, on the process required to facilitate an Employee's return to work. In addition, for payment of a Supplemental Fee to be mutually agreed upon, Magellan Employer Services will provide onsite conflict management consultation in any situation in which two (2) or more Employees experience difficulty in their work relationship. Any advice or recommendations made pursuant to this paragraph is not and shall not be construed as a legal opinion.

6. Orientation. Magellan Employer Services will provide any reasonably necessary Employee orientations to the EAP upon implementation of EAP services. At Sponsor's option, orientations may be

conducted in person at a Sponsor worksite in exchange for an equivalent number of Service Hours (as defined below). All other orientations will be conducted telephonically or via Webinar.

7. Seminars and Related Services. At the request of Sponsor and a minimum of four (4) weeks' notice, Magellan Employer Services will attend Sponsor health fairs or open enrollments and/or provide Magellan Employer Services' standard employee wellness seminars and supervisor training ("Service Hours") at a mutually agreeable time, date, location, and medium (most often at the Sponsor worksite). Ten (10) Service Hours are included in the Base Fee per Contract Year. Service Hours in excess of those included in the Base Fee, if any, are available for a Supplemental Fee at the rate indicated on Addendum B. Service Hours do not include non-local travel expenses (*i.e.*, those reasonable expenses in connection with travel in excess of fifty (50) miles or one (1) hour from the office of the Magellan Employer Services representative to the worksite, charged at Magellan Employer Services' actual cost), special instructional materials and certain specialized training services, if any. In the event that any service is scheduled and subsequently canceled with less than five (5) business days' notice, Sponsor will be billed or debited as if the scheduled services had been delivered.

8. Critical Incident Stress Management. At the request of Sponsor, Magellan Employer Services will provide CISM Services to impacted Employees. Up to ten (10) hours per incident will be made available to Sponsor at no additional charge for services delivered within the United States. There is no limitation on the number of incidents for which CISM Services may be requested. Unless otherwise agreed by Magellan Employer Services and Sponsor, CISM Services shall be delivered at a Sponsor worksite. CISM Services in excess of those included in the Base Fee, if any, are available for a Supplemental Fee at the rate indicated on Addendum B. In the event that any CISM session is scheduled and subsequently canceled with less than a minimum notice of seventy-two (72) business hours, Sponsor will be charged a cancellation fee in accordance with Addendum B. CISM Services do not include non-local travel expenses (*i.e.*, those reasonable expenses in connection with travel in excess of fifty (50) miles or one (1) hour from the office of the Magellan Employer Services representative to the Sponsor worksite, at Magellan Employer Services' actual cost).

9. Employee Communications Program. Magellan Employer Services will provide its standard communications materials to Sponsor for use and dissemination to its Employees. Materials will be delivered to one (1) Sponsor location and may consist of print and/or electronic materials including, employee brochures with wallet cards, workplace posters that include the toll-free telephone number for accessing Services, a supervisor manual, and employee and supervisor videos. Sponsor agrees that Magellan Employer Services' obligation under this section does not include the costs associated with home mailings and notices to Employees or Household Members required by state or federal law.

10. Work/Life Services. Magellan Employer Services will provide, or arrange for a third party to provide, telephone consultation, information, education, access to an expanded on-line library of information and tools, and referral services in connection with child care, elder care, parenting issues, children with special needs, schooling and education, teen and young adult issues and adoption assistance, as well as personal convenience services such as pet care, relocation assistance, home or auto repair and improvement, and similar services ("Work/Life Services"). Enrollees may access Work/Life Services by telephoning the assigned Magellan Employer Services toll-free telephone number. Work/Life Services are available twenty-four (24) hours per day, seven (7) days per week. When an Enrollee requests a referral for child care or elder care, a consultant will gather information about the Enrollee's dependent care needs and send the Enrollee a packet of educational materials and a list of no fewer than three (3), to the extent available, licensed, certified or registered dependent care providers with confirmed vacancies matching the Enrollee's expressed needs. In all cases, the information about, and description of, a particular information agency, resource organization, placement agency, or direct child care or elder care service provider has been provided by the agency, organization, or direct child care or elder care service provider.

11. Coverage for Services

11.1 Commencement and Termination of Coverage. The eligibility of an Employee for Services under this Agreement shall commence on the first day of his or her employment by Sponsor (or such other time as specified by Sponsor) on or after the Effective Date. A Household Member shall commence eligibility on the later of the date he or she becomes a Household Member and the date on which the Employee becomes eligible. The eligibility of an Employee for Services under the Agreement shall terminate on the earlier of (i) the last day of the month following the month of his or her termination of employment by Sponsor, or, if Employee is a COBRA beneficiary, the last day of his or her continuation coverage under COBRA or (ii) termination of the Agreement. Household Members shall remain eligible for Services until the eligibility of the Employee related to them ceases or until they cease to be Household Members, whichever occurs first. Notwithstanding, each Enrollee will be entitled to receive the full number of In-person Sessions identified in Section 3.2 of this Addendum A for an identified problem, as clinically appropriate, if he or she has scheduled an appointment with an EAP Counselor for that problem prior to the last date of eligibility as specified in this section. Magellan Employer Services reserves the right to terminate the eligibility of any Enrollee, without right of reinstatement, for fraud or deception in the use of Services or for knowingly permitting such fraud or deception by another. Any such termination will be effective on the date Magellan Employer Services mails notice of cancellation, unless the notice specifies a later date. Magellan Employer Services will not terminate the eligibility of any Enrollee because of his or her health status or use of the EAP.

11.2 Individual Continuation of Eligibility. An Enrollee does not have the right to renew his or her eligibility for Services under this Agreement once his or her relationship (employment or otherwise) to Sponsor is terminated. An Enrollee's right to receive Services is determined solely by this Agreement.

11.3 Review of Termination of Coverage by Director. If any person believes that an Enrollee has been canceled or denied eligibility or services under the Agreement because of an Enrollee's health status or requirements for health services, he/she may request a review by the Director of the Department of Managed Health Care of the State of California under Section 1365(b) of the California Health and Safety Code.

12. Exclusions. The EAP services provided hereunder do not include any of the following:

- (a) Evaluations required by any state or federal judicial officer or other governmental official or agency mandating that a Enrollee undergo counseling;
- (b) Court-mandated counseling and evaluations or recommendations to be used in child custody proceedings, child abuse proceedings, criminal proceedings, workers' compensation proceedings, or any legal actions of any kind;
- (c) Evaluations for fitness for duty determinations or excuses for leaves of absence or time off;
- (d) Medical care, including services for a condition that requires psychiatric treatment (for example, a psychosis);
- (e) Inpatient treatment;
- (f) Services by providers who are not part of Magellan Employer Services' EAP Counselor network;
- (g) Group counseling;
- (h) In-person Sessions that were not accessed through Magellan Employer Services (either through the toll-free telephone access line or the on-line self-referral service) for the particular Episode of Care;
- (i) Psychological, psychiatric, neurological, educational, or IQ testing;
- (j) Remedial and social skills education services, such as evaluation or treatment of learning disabilities, learning disorders, academic skill disorders, language disorders, mental retardation, motor skill disorders, or communication disorders; behavioral training; cognitive rehabilitation;

- (k) Medication or medication management;
- (l) Examinations and diagnostic services in connection with obtaining employment or a particular employment assignment, admission to or continuing in school, securing any kind of license (including professional licenses), or obtaining any kind of insurance coverage;
- (m) Testimony, creation of records, or other services in connection with legal proceedings;
- (n) Guidance on workplace issues when the Enrollee sues, or threatens to sue, Sponsor;
- (o) Acupuncture;
- (p) Biofeedback or hypnotherapy; and
- (q) Services to permit individuals to fulfill any group health plan prerequisite that EAP services be utilized prior to behavioral health services becoming available.

13. **Choice of Providers.** Enrollees may select an EAP Counselor identified by an EAP Consultant or CSA, or through the online referral service at MagellanHealth.com. Magellan Employer Services has no obligation to provide or arrange for EAP services by any person who is not an EAP Consultant or EAP Counselor.

14. **Financial Responsibility.** Enrollees have no financial responsibility in connection with EAP services provided under this Agreement. However, fees for professional services provided by resources other than Magellan Employer Services or EAP Counselors, including, but not limited to, the retention of lawyers, financial consultants, dependent care providers, or other professional or service providers, will be the responsibility of the Enrollee and/or his or her group health plan or other benefit programs, as applicable.

B. Administrative Services

1. **Account Management.** Magellan Employer Services will designate a member of its account management staff to act as a liaison to Sponsor and to respond to questions, resolve service delivery issues, facilitate consultation on behavioral health topics and provide advice on the effective use of services. All account management services will be delivered telephonically unless otherwise mutually agreed upon by the parties.

2. **Reporting.** Via a password-controlled customer website dashboard, Magellan Employer Services will offer a comprehensive set of standard reports online, available to Sponsor at any time other than regularly scheduled maintenance downtime of the dashboard. Additional or customized reports requested by Sponsor may be provided by Magellan Employer Services for an additional fee to be mutually agreed upon. Reports provided by Magellan Employer Services will include aggregate Sponsor data and will comply with applicable laws regarding confidential information.

C. Limited Liability and Warranties

Magellan Employer Services warrants that it and its third party vendors will make every effort to ensure the accuracy of the information or the appropriateness of any service or product provided to Enrollees. Referrals given by Magellan Employer Services to Enrollees for elder or child care, legal or financial consultation services or other community services are not endorsements or recommendations for the referred programs or providers. The responsibility for selecting and engaging such providers lies solely with the Enrollee. Vendors and such other providers are not and shall not be deemed agents of Magellan Employer Services or Sponsor.

D. Suspension of Services

Magellan Employer Services reserves the right to suspend or terminate access to Work/Life Services and/or online services upon ninety (90) days' written notice if, in Magellan Employer Services' judgment, such services cease to be available on commercially reasonable terms from third party vendors. If Magellan Employer Services elects to suspend or terminate any such services, the remaining provisions of this

Agreement will remain in full force and effect, except that Magellan Employer Services will adjust its Service Fees pro rata to reflect the suspension or termination of these services.

ADDENDUM B FEE SCHEDULE

PEPM Rate

1-8 In-person Session EAP, EAP Consultant Answer (including all Services per Addendum A)	\$2.32
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Supplemental Fees

Service Hours, in excess of 10 per Contract Year	\$230.00 per hour plus non-local travel costs (per Addendum A)
CISM Services, in excess of 10 hours per incident	\$250.00 per hour plus non-local travel costs (per Addendum A)
CISM Cancellation Fee	\$250.00 per hour

Magellan Health Services of California, Inc.-Employer
Services
Employee Assistance Program
Combined Evidence of Coverage
and Disclosure Form

The purpose of this Combined Evidence of Coverage and Disclosure Form is to let you know the terms and conditions of your EAP benefit. You have the right to review this document before you receive EAP services. We encourage you to read this form completely and carefully. If you have any special mental health care needs, you should read carefully the sections of this form that may apply to those needs. **This Combined Evidence of Coverage and Disclosure Form is only a summary of your plan. The EAP plan contract must be consulted to determine the exact terms and conditions of coverage.** A copy of the plan contract will be furnished upon request. If you would like additional information about your EAP benefit, please call us toll-free at the telephone number on the attached Benefit Schedule.

IMPORTANT:

Can you read this in English? If not, we can have somebody help you read it. For free help, please call your toll free number.

IMPORTANTE:

¿Puede leer este documento en inglés? Si la respuesta es no, tenemos personas que lo pueden ayudar a leerlo. Quizás también pueda obtener un extracto de las disposiciones importantes de este documento, escrito en su idioma. Para obtener ayuda gratis, llame a su número telefónico gratuito.

P.O. Box 710430
San Diego, CA 92171
800-424-1565 (option 7)

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Introduction

The EAP is a confidential personal consultation program provided through Magellan Health Services of California, Inc.—Employer Services* to help you and your *eligible dependents* deal with personal problems. It is in addition to benefits available under your health benefit plan. You can call us 24 hours a day, seven days a week, via a toll-free telephone number for *Crisis Counseling* and to obtain referrals to *EAP counselors* and other community resources.

Definitions

Brief counseling: Outpatient counseling that is problem-focused; that emphasizes skills and strengths and encourages practicing new behaviors; that involves setting goals achievable in a one to five month period; that involves interpretation, suggestions, and a framework provided by the counselor; that you may utilize alone or together with others who are important to resolution of your problem.

Crisis Counseling: The process of responding to a request for immediate services in order to determine whether an *Emergency* exists and, based on that determination, of making a referral to *Emergency Behavioral Health Services and Care*, to community resources, or to an *EAP counselor*. *Crisis Counseling* includes communication with the person in crisis that is focused on defusing the person's severe emotional reaction to a situation in order to enable that person to accept the referral and deal with the immediate crisis without causing harm to self or others.

Domestic Partner: A person of the same or opposite sex who shares your permanent residence; has resided with you for at least one year; is at least 18 years of age and not a blood relative; and is financially interdependent with you through common ownership or lease of real property; joint ownership of a motor vehicle; a joint bank account or a joint credit account; and/or other indicators of financial interdependence.

EAP counselor: A psychologist, clinical social worker, marriage, family and child counselor or other professional who is licensed under applicable state law to deliver counseling services and who is contracted with us to provide EAP services.

Eligible dependent: A person eligible for EAP coverage through his or her relationship with an eligible employee of the *plan sponsor*. *Eligible dependents* may include your spouse, your children, your *domestic partner*, or members of your household. Ask the *plan sponsor* who qualifies as an *eligible dependent* under your EAP.

Emergency Behavioral Health Services and Care: Screening, examination, and evaluation services that are furnished in order to evaluate and/or stabilize an individual experiencing an emergency medical condition (including emergency mental health or substance abuse conditions).

Emergency: A medical condition manifesting itself by acute symptoms of sufficient severity (including pain) that the absence of immediate medical attention could reasonably be expected to result in death or serious bodily (or psychological) harm to you and/or others.

Episode of care: A continuous course of counseling for a specific *problem* or set of *problems*, up to the number of *sessions* allowed by your EAP.

Fraud: Knowingly making, or causing or permitting to be made, false statements in order for you or another person to obtain EAP services or payment to which you or the other person are not entitled. *Fraud* includes any act that constitutes fraud under applicable federal or state law.

Grievance: Any written or oral expression of dissatisfaction regarding us and/or a provider, including quality of care concerns. The term “grievance” includes any complaint, dispute, request for reconsideration, or appeal made by you or your representative.

Plan sponsor: The employer that contracts with us to provide EAP services to its employees or members, respectively, and their *eligible dependents*.

* Magellan Health Services of California, Inc.-Employer Services is a subsidiary of Magellan Health, Inc. that provides services in California and is licensed by the California Department of Managed Health Care.

Problem: A specific personal issue, concern, or type of matter or situation for which you obtain assistance from the EAP in attempting to resolve.

Session: A fifty (50) minute visit by one or more participants, individually or with members of his/her family, with an **EAP counselor** to discuss personal problems.

Us, We, Our: Magellan Health Services of California, Inc.—Employer Services, your EAP program administrator.

You, Your: The person eligible for EAP services as an employee of a **plan sponsor**.

Eligibility and Coverage

Ask your **plan sponsor** who is eligible to receive EAP services.

❖ **Start and end of coverage**

If you are eligible, your coverage begins on the first day of your employment by the **plan sponsor** and remains in effect so long as you are still eligible and our contract with the **plan sponsor** remains in effect. If your coverage ends after you have received your first **session** with the **EAP counselor**, but before you have received the full number of **sessions** for which you are eligible, you may still receive the full number, as clinically appropriate. If your coverage ends, regardless of the reason, you do not have any right to renewal or reinstatement except as described below under Individual Continuation of Group Benefits.

❖ **Termination of benefits**

In most cases, your coverage will end when our contract with the **plan sponsor** terminates. There are also some circumstances when your coverage may end even though the contract remains in effect, for example, when you are no longer eligible to receive EAP benefits as an employee of the **plan sponsor** or we no longer want to provide services to you because of your conduct. Your coverage cannot be canceled or not renewed because of your health status or your use of the EAP. If you think this has happened, you may request review by the Director of the California Department of Managed Health Care and/or call us at the toll-free number on the attached Benefit Schedule or send us a written complaint as described below.

- Termination of contract with **plan sponsor** for nonpayment – If the **plan sponsor** fails to pay our fees, we may terminate the contract for nonpayment. We will first give the **plan sponsor** 15 days notice of our intent to terminate the contract for non-payment. If payment is not received within those 15 days, we will terminate the contract; the **plan sponsor** will furnish you notice of the termination and coverage will terminate 15 days after the notice to you. After termination, we will permit reinstatement of the contract as if it had not been terminated once during any 12-month period if the **plan sponsor** pays the delinquent fees before the next payment date.
- Loss of eligibility – Your coverage will end on the day you cease to be eligible under your **plan sponsor's** eligibility criteria (for example, if you separate from your **plan sponsor**). (See also the section below on Individual Continuation of Group Benefits.)
- Termination of coverage based on your conduct – We reserve the right to cancel your coverage for **fraud** or deception in the use of EAP services. (“**Fraud**” means knowingly making, or causing or permitting to be made, false statements in order for you or another person to obtain EAP services or payment to which you or the other person are not entitled. **Fraud** includes any act that constitutes fraud under applicable federal or state law.) Cancellation is effective immediately on the date we mail notice of cancellation, unless the notice specifies a later date. If we cancel your coverage based on your conduct, you forfeit all continuation rights described below under Individual Continuation of Group Benefits and to coverage under any of our programs in the future.

❖ **Dependent coverage**

Your **eligible dependents** are covered during the same time you are.

Prepayment Fees

Your *plan sponsor* pays us the full cost of the EAP, including services provided to you. You have no obligation to pay any amount to enroll in the EAP or to obtain EAP services; there are no premiums, co-payments, co-insurance, or deductible payments applicable to EAP services.

Other Charges

Your *plan sponsor* pays us the full cost of the EAP, including services provided to you. You have no obligation to pay any amount to enroll in the EAP or to obtain EAP services; there are no premiums, co-payments, co-insurance, or deductible payments applicable to EAP services.

Reimbursement Provisions

Because we pay the *EAP counselors*, you do not have to file any claims for EAP services. All *EAP counselors* are under contract with us. By law, every contract between us and our *EAP counselors* provides that you will not be liable to the counselor for EAP services you receive, even if the counselor does not receive payment from us. You should not make an agreement with any *EAP counselor* to pay the counselor for EAP services. You will be responsible to pay for the services if you and the *EAP counselor* decide additional services not covered by the EAP are necessary, if you obtain EAP services from a counselor who does not have a contract with us, or if you access a contracted *EAP counselor* directly, without first calling us at the toll-free number to request EAP services. Sometimes your group health plan will cover these costs. You should check whether your group health plan covers the cost of health care services to which you are referred. The decision to use any outside resources will be up to you. If, in the unlikely event of a mistake, the *EAP counselor* requires you to pay for EAP services, you may call the toll-free number on the attached Benefit Schedule, or send a letter to Comment Coordinator, Magellan Health Services of California, Inc.—Employer Services, at the address on the first page, so that we can arrange for your reimbursement.

Confidentiality

The EAP is designed as a confidential program and we are committed to protecting your privacy. Your confidentiality is protected by law. In most cases, EAP counseling offices are located away from the worksite. The discussions you have with your *EAP counselor* will not be disclosed to anyone outside the EAP without your written consent, except in the specific instances required or permitted by law (for example, where child abuse or elder abuse must be reported). You are encouraged to discuss the rules of confidentiality (and the exceptions) directly with your *EAP counselor*. A STATEMENT DESCRIBING OUR POLICIES AND PROCEDURES FOR PRESERVING THE CONFIDENTIALITY OF MEDICAL RECORDS IS AVAILABLE AND WILL BE FURNISHED TO YOU UPON REQUEST. Please also see our Privacy Notice below.

Description of EAP Services

The EAP provides personal consultation services to assist you in resolving a range of personal problems, including, but not limited to:

- work-related issues
- parenting concerns
- marriage and family distress
- relationship issues
- use and misuse of alcohol and drugs, and co-dependency issues
- stress related to financial and legal problems
- emotional stress
- life crises
- other similar personal problems

The personal consultation services consist of an assessment of your problem by a licensed mental health professional, and, as clinically appropriate:

- **brief counseling**; or
- a referral to a resource in your community for treatment. If you are referred for treatment beyond the personal consultation services, with your permission, we may also follow up to monitor the effectiveness of the assistance you receive.

See the attached Benefit Schedule for the number of **sessions** in your program.

The EAP personal consultation service includes only assessment, **brief counseling**, referral to treatment providers for longer-term or specialized treatment, and follow-up on referrals. You and your **eligible dependents** are eligible to receive up to the number of **sessions** per problem indicated on the attached Benefit Schedule, as clinically appropriate. If you obtain in-person counseling for a problem together with an **eligible dependent**, such as your spouse, the total number of in-person sessions for which you and the other person are eligible for that problem is still the number of **sessions** in your program. The number of **sessions** does not double when two persons participate in counseling or triple when three persons participate. If the **EAP counselor** determines after one or two **sessions** that your problem or condition cannot be resolved in **brief counseling**, the **EAP counselor** will assist you in transitioning out of the EAP to a provider who is appropriate for your problem or condition. At that point, no further EAP **sessions** are available, except in connection with transition to another provider. This may occur, for example, if the **EAP counselor** assesses that you have a problem or condition that requires more **sessions** than the number available under the EAP or that you have a condition that requires treatment by a psychiatrist.

Exclusions

Your EAP does not provide or pay for:

- Medical care, including services for a condition that requires psychiatric treatment (for example, a psychosis)
- Inpatient treatment
- Services by providers who are not part of our **EAP counselor** network
- EAP **sessions** that were not accessed through our toll-free telephone number or our on-line self-referral service for the particular **episode of care**
- Psychological, psychiatric, neurological, educational, or IQ testing
- Remedial and social skills education services, such as evaluation or treatment of learning disabilities, learning disorders, academic skill disorders, language disorders, mental retardation, motor skill disorders, or communication disorders; behavioral training; cognitive rehabilitation
- Medication, medication management. If you have a mental health or substance abuse condition for which medication is required, you must see a doctor to prescribe the medication and oversee your use of the medication.
- Evaluations for fitness for duty or excuses for leaves of absence or time off
- Examinations and diagnostic services in connection with obtaining employment or a particular employment assignment, admission to or continuing in school, securing any kind of license (including professional licenses), obtaining any kind of insurance coverage
- Court-mandated counseling, evaluations required by a state or federal judicial officer or other governmental official or agency or to be used in legal actions of any kind (for example, child custody proceedings)
- Testimony in legal proceedings, creation of records for legal proceedings or other preparation for legal proceedings
- Guidance on workplace issues when you sue, or threaten to sue, your **plan sponsor**
- Acupuncture
- Biofeedback & hypnotherapy

In addition, referrals given in connection with EAP services are not endorsements or guarantees for the programs or providers to which you are referred. You are encouraged to discuss any concerns about resources with your *EAP counselor*.

Access to Services

To access employee assistance services, you must call us at the toll-free number on the attached Benefit Schedule for the particular *episode of care*. Our customer service representatives and care managers are available to take your call 24 hours/day, 365 days/year.

❖ Personal consultation services

If you are seeking consultation about a personal problem, our customer service representative or care manager will ask you to briefly describe the problem for which you are seeking assistance. If you want to be seen by an *EAP counselor*, we will give you information about *EAP counselors* in the area where you would like to be seen. If you like, you may review a list of *EAP counselors* on our website www.MagellanHealth.com/member, before you call. After we set up an EAP case for you, you may schedule an appointment with the *EAP counselor* for a time convenient to you and the *EAP counselor*. *EAP counselors* have office hours during normal business hours; some *EAP counselors* are open during evenings and weekends. You may schedule an appointment with the *EAP counselor* for a time convenient to you and the *EAP counselor*. If you cannot keep a scheduled appointment with the *EAP counselor* – whether the first appointment or a later appointment – you must notify the counselor's office at least 24 hours before the appointment time.

❖ Crisis services – What to do in an Emergency

If you have an emergency medical condition that requires emergency treatment, we recommend that you go immediately to the nearest hospital emergency room or trauma center or call "911" or the appropriate local telephone number for emergency services. In crisis situations, you may call us, toll-free, any time, day or night, 7 days a week, for *crisis counseling*. A licensed counselor will speak with you about your current situation. If you are in need of *Emergency Behavioral Health Services and Care*, the counselor will direct you to an appropriate resource in your community. The EAP does not cover medical care.

Choice of Providers

❖ Our provider network

EAP services are available only through the network of independent *EAP counselors* with whom we have contracted. Each *EAP counselor* has at least a master's level degree in a behavioral health field, a current, valid license to practice behavioral health, and professional behavioral health experience. *EAP counselors* most frequently include social workers, psychologists, and marriage and family therapists. Because EAP services are designed to assist with problems that do not require psychiatric treatment, *EAP counselors* are rarely psychiatrists. However, a small number of psychiatrists are *EAP counselors*; you may utilize those *EAP counselors* just the same as other *EAP counselors*. We pay our contracted *EAP counselors* for their services on a fee-for-service basis; we do not use any financial incentives for the *EAP counselors* to reduce or limit their services to you. If you would like more information about our provider network, you may contact us at the toll-free number on the attached Benefit Schedule or check on-line at www.MagellanHealth.com/member.

❖ Your Liability for payment

If you choose to obtain EAP services from a counselor who is not on our provider network, you will be responsible to pay for the services.

❖ **Choosing or changing a provider**

Only *EAP counselors* in our network of providers are eligible to provide EAP services. You may review a list of our *EAP counselors* in your area at any time. However, you must call us at the toll-free number for a referral for EAP services (see Access to Services section). To obtain a list of *EAP counselors*, call the toll-free telephone number on the attached Benefit Schedule, write to the Network Department at the address on the first page, or check on-line at www.MagellanHealth.com. Because we update the list on a regular basis, it is subject to change without notice. If you are dissatisfied with your *EAP counselor*, we will make another *EAP counselor* available to you, whenever possible. Simply call the toll-free number on the attached Benefit Schedule. We do not guarantee the initial or continued availability of any particular *EAP counselor*.

❖ **Continuation after *EAP counselor* leaves our provider network**

If we terminate our contract with the *EAP counselor* you are seeing, but you wish to continue to see the counselor to complete your EAP services, in most cases, you may do so, provided that additional EAP *sessions* are available and clinically appropriate. You may simply continue seeing the counselor, without seeking our approval. However, we will contact you to arrange for referral to another contracted counselor in the following circumstances:

- If your *EAP counselor* refuses to continue to see you on the same terms and conditions after termination of his/her contract, or
- If we terminate your *EAP counselor* because of *fraud*, criminal activity, or incompetence or unprofessional conduct likely to be harmful to client safety or to delivery of client care.

❖ **Continuation with a non-contracted provider when you become eligible for our EAP services**

If you are receiving EAP services through another EAP organization when your employer switches EAP vendors to us, it is likely that the other organization will continue to cover that *episode of care* until its completion. However, if at the time of the switch, you have not completed an *episode of care* from a provider not contracted with us for an acute, serious, or chronic mental health condition, upon your request, we may allow you to complete the *episode of care* with the non-contracted provider. In deciding whether to allow a provider not contracted with us to furnish you EAP services, we will take into account the severity of your condition, the amount of time needed to transition to a new, contracted *EAP counselor*, and the willingness of the provider to agree to our standard provider contract. If you would like information about continuing with a non-contracted provider when you switch to our EAP, call the toll-free number on the attached Benefit Schedule.

Facilities

In most areas, the offices of our *EAP counselors* are located close to where you work or live. To find out the locations of *EAP counselors*, call the toll-free number on the attached Benefit Schedule or check our website at www.MagellanHealth.com.

Second Opinions

If you have questions about the *EAP counselor's* assessment of your problem or the action plan developed with the *EAP counselor* or if the *EAP counselor* is unable to make an assessment, you may contact us to discuss the assessment or action plan. You may also contact us to discuss any concerns or questions you have if your problem is not improving within an appropriate time period. After discussing the issues with our care manager, you may request a second opinion. If we determine a second opinion is clinically appropriate and you have EAP *sessions* left, our care manager will refer you to an appropriately qualified professional -- a licensed behavioral health care provider acting, within the scope of his or her practice, who has a clinical background, including training and expertise, in connection with the condition or conditions for which you request a second opinion -- who will provide a second opinion. In a case involving an imminent, serious health threat, we will process your request on

an expedited basis. If you would like additional information regarding the availability of a second opinion, call us toll-free at the number on the attached Benefit Schedule or write to us at the address on the first page.

Disputes and Grievances

If you have a ***grievance*** regarding any of our services or the services of any ***EAP counselor***, or you have a dispute about our services, you may call the toll-free number on the attached Benefit Schedule, or send a letter to Comment Coordinator, Magellan Health Services of California, Inc.—Employer Services, at the address on the first page. You may make your ***grievance*** by telephone or in writing or on-line through www.MagellanHealth.com/member. You may request a ***grievance*** form to submit your ***grievance*** in writing. If you need assistance completing the ***grievance*** form, please contact us at the toll-free number on the attached Benefit Schedule. If possible, we will respond to your inquiry immediately. We will provide you with written acknowledgement of your complaint within five (5) calendar days except when your complaint does not relate to coverage under the EAP and we are able to resolve your complaint by the next business day. We will resolve your ***grievance*** within thirty (30) calendar days following our receipt of your complaint. We will offer you a resolution in writing, explaining the reasons for our resolution. If your complaint or ***grievance*** is of an urgent nature you may call us at the toll-free number on the attached Benefit Schedule and let us know that you have an urgent ***grievance***. (An urgent complaint or ***grievance*** is a complaint or ***grievance*** that involves an imminent and serious threat to your health, including but not limited to, severe pain, potential loss of life, limb, or major bodily function.) We will conduct an expedited review and provide you with a written statement of our resolution within three (3) calendar days of receipt of the complaint or ***grievance***. You have the right to immediately contact the California Department of Managed Health Care; you do not have to participate in our ***grievance*** process before asking the Department of Managed Health Care to review your urgent complaint or ***grievance***. You may file a ***grievance*** up to 180 calendar days following any incident or action that is the subject of your dissatisfaction.

Department of Managed Health Care

The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a grievance against your health plan, you should first telephone your health plan at **1-800-523-5668** and use your health plan's grievance process before contacting the department. Utilizing this grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your health plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment, coverage decisions for treatments that are experimental or investigational in nature and payment disputes for emergency or urgent medical services. The department also has a toll-free telephone number **(1-888-HMO-2219)** and a TDD line **(1-877-688-9891)** for the hearing and speech impaired. The department's Internet Web site <http://www.hmohelp.ca.gov> has complaint forms, IMR application forms and instructions online.

Provisions Regarding Fraud

We have put in place an anti-fraud program to detect, deter, and fully investigate suspected ***fraud*** on the part of our counselors, affiliates, staff and/or members. To maximize protection against ***fraud***, we have an anti-fraud hotline to allow you and all of our providers, affiliates, and staff to report suspicions of

fraud. If you suspect ***fraud*** related to submission of claims or other activities related to your EAP benefit, please contact our anti-fraud hotline at 1-800-443-5704.

Public Policy Participation

If you are interested, you can have a voice in our policy-making process. We maintain a Public Policy Committee that meets on a quarterly basis to establish the public policy for us. Call us with your ideas and/or your interest in serving on the Public Policy Committee at 1-800-424-1565 ext. 77109 or write to Magellan Health Services of California, Inc.—Employer Services, Public Policy Committee at P.O. Box 710430, San Diego, CA 92171.

Organ Donations

We encourage you to consider making a commitment to organ or tissue donation and to talk to your family or next of kin about your decision. When you donate an organ or tissue, you give someone else the chance to live. For information about how to become an organ donor, you can contact Health Resources and Services Administration (HRSA) at <http://www.organdonor.gov/> or HRSA, U.S. Department of Health and Human Services, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or the Coalition on Donation at coalition@shareyourlife.org or 700 North 4th Street, Richmond, VA 23219.

Renewal Provisions

The contract with your ***plan sponsor*** is renewable at the option of the ***plan sponsor***. We may change our fees, services, or the terms of the contract with your ***plan sponsor*** on any renewal of the contract unless otherwise mandated by law. If we do make any changes, we will give your ***plan sponsor*** at least 30 days advance notice of the change. While the number or type of EAP ***sessions*** you receive may change in such cases, it is unlikely that your eligibility for EAP services will be affected. We can choose not to renew at all if the ***plan sponsor*** fails to pay our fees, commits ***fraud*** or intentionally misrepresents material facts, or fails to comply with a material provision of the contract. If we choose to cancel or not renew the EAP contract with your ***plan sponsor***, your ***plan sponsor*** will notify you at least 15 days prior to the termination date.

Individual Continuation of Group Benefits

You and/or members of your family may be able to continue coverage for EAP services on an individual basis, at your/their cost, after termination of your employment or other loss of your eligibility, break-up of your family, or your death under the federal COBRA law. If you have questions whether COBRA continuation benefits are available in connection with the EAP, ask your ***plan sponsor***.

Language Assistance

As an EAP plan member, you have the right to interpreter services in your language, at no cost to you, to help you get EAP services. For help with getting an interpreter or to request this entire document in Spanish, please call us toll-free at the telephone number on the attached Benefit Schedule, 24 hours a day, 7 days a week.

Further Information

Your ***plan sponsor*** may provide brochures and other materials on the EAP. In addition, our website, www.MagellanHealth.com/member, has information about EAP services. If there are slight variances between the website or the materials furnished by your ***plan sponsor*** and this form, this form should be regarded as more accurate. If you desire more information, call us toll-free at the number on the attached Benefit Schedule.

Your Responsibilities

This document has identified our responsibilities in providing EAP services to you and your family. Our effectiveness is enhanced when you also understand your responsibilities when using our EAP services.

- You have the responsibility to give the **EAP counselor** the information he or she needs, so the **EAP counselor** can deliver the best possible care.
- You have the responsibility to ask your **EAP counselor** questions about your care, so you understand your care.
- You have the responsibility to follow your counseling plan. The plan of care is to be agreed upon by you and the **EAP counselor**.
- You have the responsibility to keep your appointments. If you cannot keep an appointment, you must call your **EAP counselor's** office at least 24 hours before the appointment time.
- You have the responsibility to let your **EAP counselor** know when the counseling plan is not working for you.
- You have the responsibility to report **fraud** to us.
- You have the responsibility to openly report concerns about quality of care.
- You have the responsibility to treat those giving you care with dignity and respect.

BENEFIT SCHEDULE

EAP Services

- Personal consultation (assessment and **brief counseling** or referral, as appropriate) with an **EAP counselor** -- Up to 8 **sessions** per **problem** per year, as clinically appropriate
- Follow-up

Toll-Free Telephone Number for service access, questions about the EAP, the availability of a second opinion, and complaints: 1-800-523-5668. If you are speech or hearing impaired, call us toll-free at 1-800-456-4006 (TDD) for assistance.

There are no premiums, copayments, coinsurance, or deductible payments.

NOTICE OF PRIVACY PRACTICES
Magellan Health Services of California, Inc.–Employer Services
Employee Assistance Programs

THIS NOTICE DESCRIBES HOW YOUR HEALTH INFORMATION MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE READ THIS NOTICE CAREFULLY.

Effective Date: April 14, 2003

USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION (PHI)

Magellan Health Services of California, Inc.–Employer Services believes in protecting the privacy of your health information. We may use or disclose your Protected Health Information (PHI) only for very specific reasons. **PHI is any information related to health that identifies an individual.** This information can be electronic or in any other format. Different types of uses and disclosures are listed and explained below. Note: An example is not given for every use or disclosure reason.

When disclosing or using PHI, we will use the least amount of information necessary. If we need to use or release information in a way that is not generally described in this notice, we will contact you for your written permission before the proposed use or disclosure.

TYPES OF USES OR DISCLOSURES OF INFORMATION

Treatment

We may use or disclose PHI about you to assist in the provision of treatment or services. Treatment means the provision, coordination, or management of health care and related services by one or more providers, including the following activities:

- Coordinating health care or related services by a provider with a third party
- Consultation between providers relating to a patient
- The referral of a patient from one provider to another

For example, we may use information you give us when we conduct an assessment, including an assessment for threat of violence (TOV), or when we provide clinical consultation. We may disclose your PHI when we refer you to an EAP counselor or coordinate your care.

Payment

We may use and disclose your PHI so that your treatment and services may be billed and payment made. For example, we may submit information about you to your health plan or claims payor, so your provider can be reimbursed for services to you. We will use information about you if a claim is submitted to us by your EAP counselor to pay the claim.

Health Care Operations

We may use or disclose PHI to carry out health care operations. Examples of health care operations include such things as:

- Activities to analyze trends relating to improving health or reducing health care costs (called population-based activities);
- Case management and coordination of health care;
- Quality assurance activities (including audits by third parties);
- Contacting your or your provider with information about other forms of care.

We may use or disclose your PHI for these or other activities that fall under this definition, such as preventive treatment programs or fraud detection and investigation.

Health Oversight Activities

We may disclose PHI to a health oversight agency for compliance activities authorized by law. These activities are necessary for the government to oversee the health care system, compliance of benefits programs, and compliance with civil rights laws. Disclosures may occur through audits, investigations, licensure or disciplinary actions or civil, administrative or criminal proceedings. We will only disclose the minimum amount of information required by law.

Information Relating to the Treatment of Minors

Information relating to the treatment of minors will be kept private according to federal and state laws. Under California law, minors age 12 and older may receive mental health and/or substance abuse treatment without permission from their parents. We follow all applicable laws that apply to the confidentiality of treatment for minors.

Health Related Benefits or Services

On occasion, we may use or disclose PHI for preventive treatment reasons. Our preventive programs meet nationally recognized quality and preventive health standards.

Lawsuits and Disputes

We may disclose PHI in response to a subpoena or court order. We may also disclose PHI in response to legal cases that directly involve us or the group health plan through which you receive benefits. All other disclosures for lawsuits or investigations will be made only with your written permission.

Treatment Alternatives

We may use or disclose PHI to let you know about other types of treatment that may be of interest to you. All such communications are handled in a manner that protects your privacy.

Release of Information to Family Members

In an emergency, or if you are not able to provide permission, we may disclose limited information about your general condition or location to someone who is directly involved in your care or the payment of your care, or who can make health care decisions on your behalf.

Release of Information to the Armed Forces

If you are or were previously a member of the armed forces, we will disclose your PHI to the armed forces as required by law. We may also disclose information as required by our contract with your armed forces health insurer. We will only release the minimum amount of information needed to carry out the purpose of the use or disclosure.

Release of Information to Workers Compensation or Similar Programs

We will not disclose PHI to workers compensation programs or other similar types of programs without your signed permission.

As Required or Permitted by Law for Public Safety

We will disclose PHI when required or permitted to do so by law for public safety. Disclosures may be made to protect you from a serious threat to your health or safety or to protect the health or safety of another person. Disclosures may also be made when requested by federal officials for national security or intelligence activities or for the protection of public officials. We will only release the minimum amount of information needed and will follow specific legal guidelines.

Government Security Clearances

We may disclose PHI when required by law for government security clearances. We will only release the minimum amount of information needed for the clearance.

Public Health Risks

We may disclose PHI as authorized or required by law for public health activities. This includes reporting child abuse or neglect, adult abuse, unfavorable events, or product defect reporting. We will only disclose the minimum amount of information in accordance with applicable law.

Inmates

If you are an inmate or are in the custody of law enforcement, we may disclose your PHI without your permission. We will only do this for your health care, for the health and safety of you or others, or further law enforcement on the property of the correctional facility.

Psychotherapy Notes

We very rarely ask for psychotherapy notes or disclose psychotherapy notes to any outside parties. Psychotherapy notes are defined as notes recorded by a mental health professional that consist of the written record or evaluation of the contents of a conversation during a private counseling session or a group, joint, or family counseling session. These notes must be maintained by your provider separately from the rest of your mental health/medical record. We may only use or disclose psychotherapy notes as required by law (for example, to avert a serious threat to health or safety) or to defend ourselves in a lawsuit by you.

Other Uses and Disclosures

Other uses and disclosures will be made only with your written permission. For example, any uses or disclosures of PHI for marketing purposes or that constitute the sale of PHI requires your written permission. You are permitted to discontinue such authorization at any time in writing. Requests to discontinue permission to release information will be honored except when we have already taken action based on your prior permission to use or disclose the information. Also, while we do not use or disclose PHI for underwriting purposes, any health plans that do so are prohibited from using or disclosing any genetic information for underwriting purposes. Similarly, while we do not use or disclose PHI for fundraising purposes, any health plans that do so must furnish the opportunity to opt-out.

RIGHTS RELATED TO PHI

You have certain rights related to your PHI under federal privacy laws. To exercise these rights, submit your request in writing to our Privacy Official at:

**Privacy Official
Magellan Health Services of California, Inc.-Employer Services
P.O. Box 710430
San Diego, CA 92171**

Right to Request Restrictions on Uses and Disclosures

You have a right to request limits on certain uses and disclosures of PHI for treatment, payment or health care operations. We will consider each request but we are not required to agree to any requested limits. In certain cases, limits set on the disclosure of PHI may affect our ability to pay for your services.

Right to Receive Confidential Communications

You have a right to request that you receive confidential information relating to PHI at an alternative location or by an alternate means if sending this information to your address in our file could put you in danger. All such requests must be in writing and must state that the release of this information through normal means could be a danger to you. All reasonable requests will be granted.

Right to Inspect and Copy Protected Health Information

You have a right to review and ask for a copy of your PHI that is part of our designated record set. This right does not apply to psychotherapy notes, information gathered to prepare for civil, criminal or administrative actions or proceedings, or where law does not permit the release. There are also circumstances where we may deny your request. For example, there are situations in which a licensed health care professional may determine that releasing the information could have an adverse effect on you or another person. In such cases we will not release the information; however we may be able to release some information in our records. We also will not release information, such as a medical record, that was created by your provider. If you want that type of information, please contact your provider directly. If allowed by your state law, we may charge a reasonable cost-based fee to copy, process and mail your information.

Right to Amend Protected Health Information

You have the right to request that we change the information that we have in our records if you believe that the information is incorrect or incomplete. We may deny this request if we determine that the records are complete and accurate, or that we did not create the information you are requesting to change. We may also deny the request if the information is not part of our official records or access is otherwise restricted by law.

Right to Receive an Accounting of Disclosures

You have a right to receive a listing of PHI disclosures that have been made other than (i) those made for treatment, payment or health care operations, (ii) those made prior to April 14, 2003, (iii) those made with your written permission, and (iv) those made for law enforcement or national security purposes. You also have the right to be notified in the event of a breach of your unsecured PHI, where "breach" means an unauthorized use or disclosure of PHI which compromises the security or privacy of the information.

Right to Obtain a Paper Copy of this Notice

You have a right to receive a paper copy of this notice, even if you have received a copy of this notice electronically.

OUR RESPONSIBILITIES UNDER THIS NOTICE

The law requires us to maintain the privacy of your PHI. The law also requires us to provide you with this notice of our legal duties and privacy practices with respect to your PHI. We are required to follow the terms of the privacy notice that is currently in effect. **We reserve the right to change the terms of this notice and to make the new notice provisions effective for all PHI that we maintain.** Should the terms of this notice change in any way that would also change your rights, we will send you a notice of this change within 60 days.

QUESTIONS AND COMMENTS

Your opinion about our services is very important to us. We also want to make sure that you fully understand your privacy rights. You can reach our Privacy Official at 1-800-424-1565. If you want more information about Protected Health Information you can go to the U.S. Department of Health and Human Services HIPAA Privacy website at www.hhs.gov/ocr/privacy/hipaa/understanding/index.html.

COMPLAINTS

You may file a complaint with us if you feel that your privacy rights have been violated. All HIPAA complaints must be submitted in writing to our Privacy Official at the address above. You may also complain to the U.S. Secretary of Health and Human Services at www.hhs.gov/ocr/privacy/hipaa/complaints/index.html. You will not receive a negative reaction from us because you filed a complaint.